

Vol. VI

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 606

LOUIS BUCHALTER, PETITIONER,

vs.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COUNTY COURT OF KINGS COUNTY, STATE OF NEW YORK

No. 610

EMANUEL WEISS, PETITIONER,

vs.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

No. 619

LOUIS CAPONE, PETITIONER,

vs.

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ON WRIT OF CERTIORARI TO THE COUNTY COURT OF KINGS COUNTY, STATE OF NEW YORK

PETITIONS FOR CERTIORARI FILED	DECEMBER 30, 1942.
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PART I

Indictment Number 23855

THE PEOPLE OF THE STATE OF NEW YORK

against

LOUIS BUCHALTER, alias LEPKE, Defendant
Murder, First Degree

Brooklyn, New York.
May 2, 1941.

Before Hon. George W. Martin, County Judge

Appearances:

For the People: Burton Turkus, Esq., Assistant District Attorney.

Julia A. McGowan, Official Stenographer.

[fol. 3] **The Defendant: I would like to talk to the Judge, first.**

The Court: Yes?

The Defendant: I do not know what this is all about. I would like permission to see my family about getting counsel.

The Court: It won't make any difference this morning. You are not going to be tried. You won't take any plea but Not Guilty.

The Defendant: I would like to have permission to see my people about having counsel.

The Court: You are entitled to have counsel, but I do not think you need them on your arraignment.

(To Mr. Turkus) Isn't he entitled to that?

Mr. Turkus: I take the position that he is entitled to have counsel at all stages of the proceedings.

The Court: What day do you want?

Mr. Turkus: Will your Honor permit him in a safe place, pursuant to the jurisdiction vested in you by the United States Government and the law enforcement agencies in whose custody he is, to see his people to the end that he may secure counsel as speedily as possible for a prompt arraignment?

[fol. 4] The Court: That is all right. I think the opportunity, Mr. Turkus, for him to see his counsel over there is such that it is pretty hard to talk with him and it is pretty hard to get to them. I had some experience with what they do over there and I know it is pretty hard to sit down and discuss matters. I am going to allow him and his family to go into this room, with one or two officers, to talk.

(To defendant) Whom do you want to talk to?

The Defendant: My wife and brother.

The Court: Are the wife and brother of this man here?

(A man and woman stand in the court-room.)

The Court: Come up here. Take them into this room
 • • • I do not know how a man can talk to his family with ten men there listening to every word he says. He is not going to jump through a window. Let a couple of men—

Mr. Turkus: Your Honor, may I say this? Louis Buchalter, alias Lepke, is in the custody of the United States Marshal. He is brought here in cooperation with the law enforcement agencies of the United States Government and the District Attorney of this county.

The Court: That is all right.

[fol. 5] Mr. Turkus: Pursuant to a writ of habeas corpus ad prosequendum. His custody at all times when he is not on trial in this court-room is vested in the United States Marshal and the United States law enforcement agencies. Under the circumstances, you can appreciate that there must be a heavy guard over this man.

The Court: A heavy guard would be all right. Two or three men in there with pistols and a few other things ought to be able to take care of him. How can a man talk to his family and have any conference with ten men standing around?

Mr. Turkus: You see, under the writ of habeas corpus ad prosequendum which brings him here, we are not responsible for the set-up in that room. He is in the custody of the United States Government and what efforts they deem fit and proper to safeguard him while he is in this court-room are theirs.

The Court: Mr. District Attorney, there is nobody who wants him to be safeguarded more than I do. I do not want him to get away, but that is ridiculous. There are ten men in there. How can he talk to his wife and his brother about [fol. 6] getting a lawyer with ten people standing around?

Anybody who can do that is marvellous. I do not want them to let him walk around the room.

Mr. Turkus: You see the attitude that the District Attorney of this county took the minute this man said he wanted to consult his family——

The Court: I am with you on this proposition. I know you want to be fair about it. How can he talk in there with ten people standing around? I could not talk and I am a pretty good talker.

Mr. Turkus: I think all he wants to discuss at this point is the obtaining of counsel. It is a large room. They can get them into a corner.

The Court: It is just big enough for about twelve people. I do not want to give him any different treatment than anybody else. As far as I am concerned, he is a bad man, and he has a bad record, and he is a dangerous man, but at the same time he is entitled to a fair opportunity to talk to his people; he is entitled to an opportunity to get counsel; he is entitled to a fair and just trial, which I know you will give him. It does not make any difference to me, but why we should make such a great hullabaloo I do not know. He is [fol. 7] just another man who walks through the door. I am not afraid anybody is going to take him out of the courtroom. If they take him out, they will have to take me with him. How they are going to go in there and talk, I do not know. I know you are not responsible for it, but maybe I am.

Mr. Turkus: The District Attorney is.

The Court: I am not directing any of my remarks toward you, regarding getting a fair deal and all that. That is ridiculous. I know you too long and I know you too well and I know you will give it to him, but what I am interested in is giving him an opportunity to talk to his wife.

Mr. Turkus: That is what regulates the procedure.

The Court: It does not regulate me in my courtroom, as to who should be with him. United States courts may have authority to take care of him but they certainly have no right to tell me where I shall let him stand or where I shall let him sit, because I won't let them tell me anything of that kind.

(Defendant's brother speaks to Mr. Turkus.)

Mr. Turkus: May we bring him out?

The Court: Yes, bring him out.

Mr. Turkus: Pursuant to the conversation which your [fol. 8] Honor permitted in the ante-room of the courtroom, the defendant has sent word to the District Attorney that he desires one week within which to get counsel to appear for him on the arraignment. That is satisfactory to the District Attorney, subject to the approval of the Court.

The Court: Give him a week.

The Defendant: Thank you, your Honor.

The Court: And I return him to the custody of the United States authorities.

[fol. 9]

PEOPLE

VS.

LOUIS BUCHALTER ALIAS LEPKE

Brooklyn, N. Y. May 16, 1941.

Hearing on Arraignment

George Rea, Official Stenographer.

[fol. 10]

Before Judge Brancato

(The defendant is arraigned for pleading to indictment charging murder, first degree)

The Clerk: What is your name?

Mr. Wegman: The defendant stands mute.

The Clerk: What is your name?

(No response)

The Clerk: Have you a lawyer?

Mr. Wegman: I am his lawyer.

The Court: Have you filed a notice of appearance, has notice of appearance been filed?

Mr. Wegman: With the District Attorney.

The Court: With the court?

Mr. Wegman: Not with this court.

The Court: File it now with the court before I take the plea.

Mr. Wegman: We are not going to enter any plea, your Honor.

The Court: You are going to talk for this defendant, aren't you?

Mr. Wegman: Yes.

[fol. 11] The Court: File notice of appearance in this court first.

Mr. Chemiski: May I be heard? I would like to have the record note—

The Court: The record will note nothing until you first file notice of appearance and say you are appearing for the defendant.

Mr. Chemiski: This is not on behalf of the defendant, but for myself.

The Court: Then I have nothing to say to you or you to me. I have called the case of People vs. Buchalter. He either speaks for himself or through counsel. If he speaks through counsel, counsel must first identify himself. You file notice of appearance, otherwise I will not listen to you. That is the ruling, sir; no argument about it.

Mr. Wegman: May I ask if the stenographer is making a record of that ruling?

The Court: You have heard what I said. We will have no argument about it. If you are attorney for the defendant you have to appear, and appear in this court.

Mr. Wegman: Does your Honor doubt that I am the attorney?

The Court: I doubt your word until you file notice of appearance. I want no argument from you or I will put you out of this court in about two seconds, because you are becoming impudent. The rule is elementary that there must be notice of appearance filed in court by counsel. It is very simple. I don't know why you want to evade doing it.

[fol. 12] Mr. Wegman: There is no question of evasion.

The Court: You have heard it, that's all, that is the ruling of the Court. File your notice of appearance and then speak for the defendant; otherwise you cannot.

Mr. Wegman: I am surprised at your Honor's statement. I have a very distinct recollection of a time when your Honor came to me and asked me to take your word for something, and I took your word.

The Court: Counsel, will you claim that you are not within the jurisdiction of this court?

Mr. Wegman: I don't know, your Honor. That question has not been determined. We have not been able to determine for ourselves whether we want to raise that question. It may be that we will want to raise it.

The Court: I don't see how your notice of appearance in this court is going to in any way prejudice your client's rights. You appear for the defendant, and if the Court has no jurisdiction in the premises you certainly cannot be hurt by an appearance, not in a criminal court.

The Clerk: Notice of appearance filed. (The clerk reads the indictment)

Mr. Wegman: I ask your Honor to adjourn the hearing under this indictment until the twenty-ninth of May. I ask for the twenty-ninth, I cannot ask for two weeks because [fol. 13] two weeks would bring it on a holiday. The reason for that is that until yesterday I had never seen or talked with or met this defendant. Until a week ago my partner had never met nor seen the defendant. This as your Honor probably can realize from the nature of the proceedings is a very complicated matter and there are many angles and many questions involved. Our presence in the case has been entirely too brief for us to attempt to assimilate all that may be involved and we require that additional time before we feel we can competently advise this defendant whether he ought to raise the question of law before a plea is entered or whether he ought to enter his plea and then proceed from that point on. It is a very serious question and a matter for careful consideration.

The Court: It should not take much time for you with your experience in the practice of federal law.

Mr. Turkus: Your Honor, this is a mile stone in law enforcement. After fifteen months of investigation by Judge O'Dwyer we have succeeded in bringing before your Honor at this bar of justice Louis Lepke on a charge of murder in the first degree, the man who pulled the strings. The district attorney of this county will zealously safeguard every constitutional right of this defendant in order that when there shall be final judgment it will be conclusive. Since counsel is in a dilemma as to his rights and remedies in the [fol. 14] situation, in order that even Lepke may have every constitutional right safeguarded, the district attorney will interpose no objection to the adjournment on arraignment to the time requested.

The Court: Well, I don't know that Louis Lepke to me means anything more than another murder case, that is all it means so far as I am concerned, who he is, what he is, or anything else. If counsel wants until May twenty-ninth I will give him a little more time to think it over. He can't

plead guilty to murder in the first degree; he has to plead not guilty.

Mr. Turkus: It is not the province of the district attorney to advise in the premises, but if there is no jurisdiction, then not even an adjournment would be valid.

Mr. Wegman: That is exactly what I have in mind, so that your Honor will not think that the application for an adjournment is a whim or fancy. Once this defendant enters a plea of not guilty, which is the only plea that can even be considered as being entered, but once he has entered that plea, he has surrendered to this court to try him. So far as the jurisdiction of the crime, there is no question about this court's jurisdiction, but if this defendant voluntarily pleads, he has surrendered his person to this court; that is the point: it is a question of his surrender.

[fol. 15] The Court: It does not make any difference how he gets in the jurisdiction; he could be kidnapped and brought here, and once he is here he is in the jurisdiction of this court and can be tried. We are not going to discuss that.

Mr. Wegman: If this court took custody of him that would be true; but this court is not taking custody of him. He is being kept by the federal authorities and until yesterday he was kept incommunicado for all practical purposes.

The Court: Once he is here, he is here under our jurisdiction and we have all rights.

Mr. Turkus: In justice to the federal authorities, the system under which counsel was permitted to confer was the same system used at all federal prisons, and when the situation was called to the attention of the authorities at the federal detention pen by counsel for Lepke, that the facilities were not suitable for proper conference, appropriate and satisfactory arrangements were made for interviewing of counsel in an interview room, so that that point is settled. I merely say that to preserve the state of the record.

Mr. Wegman: That is correct, and I want to say that so far as Mr. Turkus and Judge O'Dwyer are concerned, they have been very careful and very fair in their attitude towards this matter; but unfortunately, and without reflection in any way on them, the rules of the federal detention head-[fol. 16] quarters were such that it was impossible for counsel to confer with the defendant.

The Court: May twenty-ninth. Go ahead.

Mr. Wegman: May I ask your Honor to permit this defendant to consult with his wife and brother.

The Court: He will be taken upstairs to the pen first. Captain Gannon is over there and he has charge of prisoners. If he says it is O. K. with him, it is O. K. with me. That is his province, not mine.

[fols. 17-18] COUNTY COURT, KINGS COUNTY, PART I

Indictment Number 23855

THE PEOPLE OF THE STATE OF NEW YORK

against

LOUIS BUCHALTER, Alias Lepke, Defendant

Murder, First Degree

Brooklyn, New York, May 29, 1941.

Before Hon. George W. Martin, County Judge

Appearances:

For the People: Burton Turkus, Esq., Assistant District Attorney.

For the Defendant: J. Bertram Wegman, Esq., Jesse Clemenko, Esq. and Hyman Barshay, Esq.

[fol. 19] (The defendant was arraigned, the Court Clerk reading the indictment to him.)

Mr. Wegman: If your Honor pleases, with all due deference to this Court and a full measure of respect, defendant stands mute. I would like to explain the reason for that to your Honor, so that you will know it is not intended in any way as a reflection on this Court. We seriously doubt that this Court has any jurisdiction to try this defendant for this offense under the present conditions of his incarceration. He is not here in the custody of this Court or in the custody of the power of the State of New York. He is here, brought in by Deputy Marshals as a prisoner of the United States Government. It is perfectly true that when a defendant is before the Bar of this Court, it makes no dif-

ference how he got here or by what means he was brought here, even though he were kidnapped or anything else, but that means he is in the custody of this Court, and this Court has power of jurisdiction over his person. This defendant lacks that. We intend to preserve that.

The Court: Isn't the answer to that, he is produced here on my order in court?

Mr. Wegman: If your Honor pleases, he is produced by [fol. 20] virtue of the kindness or the voluntary act of the Federal Government.

The Court: Supposing he is produced here under an order of this Court, he is here. There might be some question in my mind—maybe I would like to argue with you the proposition—maybe they could bring him here, but he got here. In other words, taking him from Alcatraz, for instance, to bring him in here, that might be debatable ground, but once having appeared in the court, the method of his transportation here to the Court while in the City of New York, what difference does it make?

Mr. Turkus: May the District Attorney be heard?

The Court: Yes. Hear him first.

Mr. Wegman: The essential difference is this, if your Honor pleases, the Supreme Court of the United States has held that the office, the executive offices, of the Federal Government have no right to recognize a writ of habeas corpus issued by a State Court as against a Federal prisoner. If the Attorney General of the United States delivered this prisoner into the custody of this Court—

The Court: He waives the right. Can he waive it?

[fol. 21] Mr. Wegman: He cannot waive it, and that is the constitutional question that we propose to raise, and that we are raising by these motions, and this is the only means by which we can presently raise it. If this defendant were now to enter a plea on this indictment he might, by that act—

The Court: Probably submit himself to the jurisdiction of the Court.

Mr. Wegman: That we do not do. That is what we propose to reserve.

The Court: You have a perfect right to use any defense, any means, or any action that you think will protect the interests of this man. What have you got to say?

Mr. Turkus: The business of the day is to arraign this defendant, join issue, and fix a date for trial. I may make

this observation, that if there is a point of jurisdiction, there is nothing for them to be alarmed about; in fact, Lepke should be elated, because even if convicted, he would cheat the electric chair. The People have no qualms as to the propriety of his appearance, and we are here to join issue, to have a plea entered, so we may fix a trial date before a [fol. 22] jury.

Mr. Wegman: The People have no qualms about lots of things: for instance, the prejudicial statement made by Mr. Turkus. The defendant's name is Buchalter, though he is referred to as Lepke and we have no offense at the use of that name, but when the District Attorney speaks of him in court and on the record he is entitled to be called by his legal name. Beyond that, however, it seems to me that it is a gross abuse of the power of the District Attorney for him to stand here and tell this Court that this defendant is going to cheat the electric chair. There is no case against this defendant; he is not guilty in any sense of this crime, and I think nobody knows that better than the District Attorney, and the statements that have been made in the newspapers, and the accounts that appeared in the Press are highly prejudicial; they indicate something which is definitely not the fact.

Mr. Turkus: The name Lepke is the name that he adopted. The expression used was that "if he was convicted."

The Court: Do not exercise yourself much about that. [fol. 23] Mr. Turkus: I am not. That is the name he used——

The Court: Do not exercise yourself about that. It is all right for the attorney to take that attitude, but I would not exercise myself about it, if I were you. There is no question about that. The only difficulty about this case, as I see it, they raise a question. How can I compel him to submit to the jurisdiction of the Court, to enter a plea or join?

Mr. Turkus: He is properly before the Court on your own order. He is brought here for arraignment. The position that he can take is that he stands mute, as he did in New York County, the same position urged there, and the Court entered the plea.

Mr. Wegman: There was an essential difference there.

The Court: At that time he was a United States prisoner, arraigned in a United States Court.

Mr. Wegman: But he had not been committed on his sentence of the United States Court. That was a substantial difference.

Mr. Turkus: Your Honor signed the order that brought him here. He is before the Court on a charge of murder [fol. 24] in the first degree. He is here on arraignment. The arraignment has been adjourned now three weeks. It is about time that issue was joined to the end that a trial date may be fixed. If this Court has no jurisdiction, as I pointed out in the manner in which he took offense, but which would give his client the "break," as the expression goes, if he were convicted, and the Court had no jurisdiction, he would cheat, as I said, the electric chair. If the Court has no jurisdiction, all proceedings are a nullity. We are satisfied the Court has jurisdiction, satisfied to bring him to trial.

The Court: All the proceedings, counselor, would be void ab initio, from the start, if I should enter his plea and he should be tried, and your contention is correct, wouldn't it?

Mr. Wegman: That is correct.

The Court: The proceeding would be entirely of no value because the Court has not jurisdiction. Not having been able to acquire jurisdiction, the judgment of the Court could not be enforced.

Mr. Wegman: That is the reason we raise the point.

[fol. 25] The Court: But at the same time that is true, isn't it?

Mr. Wegman: Yes.

The Court: Where will he suffer then, if I enter a plea for him of not guilty? Where does he suffer in the event it shall be determined you are right in your theory, and, if you are right, you can stop this man from trying him. If you raise the constitutional question you can stop him, because the United States Courts are superior in their jurisdiction with their prisoners to the State Courts. You can stop his trial and I am not so sure on your motion before the United States Court, whether or not that would not act as a stay.

Mr. Wegman: I think your Honor is correct. I agree with everything that your Honor has said. There is no doubt about that.

The Court: How can he be hurt? He is here. He has been here three weeks, and it is essential and necessary that

some kind of a plea or some disposition of this case. If this plea that he was going to interfere with you in going ahead with what I would not take it. I will say that. I do not know what he is, or what he is, he is entitled to a fair and equal deal. He is going to get that with me, but even if I still think if I enter a plea myself, if I do not and enter a plea of not guilty and set that if you go through with the proceedings already brought or are going to bring, I say if it acts, first, as a stay of this case; second, if you are right in your contention—and I am not sure if you are not; I have not looked into it, but I have thought about it sometimes—if you are in contention then the whole proceeding of this Court not having acquired jurisdiction, the judgment of the Court is invalidated. May I say this, your Honor? So far as concerned, I must object to your Honor entering a plea. I think that if your Honor enters a plea, the case is served. The point I raise is that if I consent to a plea——

do not ask you to consent. I say if you do not waive it.

: That is right.

Court: If he submits himself to take this plea, the jurisdictional question involved in the

: That is right.

Now, while I enter a plea for him of not guilty,

: That is right.

I have the right, where he stands mute, to determine whether it is right or wrong. Suppose every time I should say, "I refuse to enter a plea," right or ridiculous, or absurd; I still would have the right. Under the theory of the case that you do not quarrel with that; there may be some doubt in my mind—the responsibility, after all, is on the District Attorney and not with me. That is the case where the responsibility rests with the District Attorney and not with me, so therefore that responsibility is not mine; so under the circumstances I

think I am bound to enter a plea of not guilty and set the case down for trial. What date do you want?

Mr. Turkus: Judge O'Dwyer directed me a few days ago [fol. 28] to set the date of July 14th for trial.

Mr. Wegman: May I be heard on that?

The Court: Yes. If he consents to a date for trial, or he picks out a date for trial, then he is submitting himself practically to the jurisdiction of the Court.

Mr. Wegman: May I suggest, your Honor, that in order that this constitutional question may be raised, and because of the fact that today is May 29th and the question is one which will necessarily have to go to the Supreme Court of the United States for ultimate decision, without consenting to a date for trial and without waiving the objection to the jurisdiction, I suggest that the case ought to go over until September at the earliest.

The Court: What do you say to that? Suppose I do this: I am not going to try this case, so consequently I am not in any position to argue about the date. Suppose I do this: Suppose I set this case down for trial before Mr. Justice Taylor, who I understand from the District Attorney's Office is going to try it—is that correct?

[fol. 29] Mr. Turkus: That is my information, too. May I say this, that the trial date will be set upon the application for a special panel. The reason I mentioned the date of July 14th is that this defendant and his counsel may be apprised of the fact that Judge O'Dwyer has directed me to try this case on that date, so they will have ample time to get themselves ready.

The Court: I am going to set it down for July 14th. Of course, as I said before, the mere fact that I set the case down for July 14th does not hinder you, because the trial judge before whom it comes on July 14th will have to pass on it as to whether he shall go on or not. All the questions are just as valuable before him as they are before me.

Mr. Wegman: May I have an order from your Honor on the minutes of this proceeding that further action taken by counsel for this defendant in connection with the proceedings in this Court shall be without prejudice to the right of the defendant to question the jurisdiction of this Court in the manner that I have specified?

[fol. 30] The Court: You have not taken any part in the proceedings. I do not see that you are entitled to an order.

Mr. Turkus: As a matter of fact, even his appearance was well worded.

The Court: Mr. Turkus, you have to expect that when men are employed as lawyers to defend men, no matter who they are or what they are, or what they are charged with, they must exercise every legal technicality.

Mr. Turkus: I did the same thing.

The Court: Some day you and I will do that. You did.

Mr. Turkus: You did too, and very capably.

The Court: And I know you did, and very capably, so it is all right. It cannot do any harm. I will give it to you. I will have the stenographer write out what you ask to have written out, and I will give it to you.

Mr. Wegman: The suggestion has been made by my associate, Mr. Barshay, that we note on the record the fact that we presently object to July 14th, that we know that that will not give us an adequate opportunity to prepare for [fol. 31] the defense if the case is to be tried; that it is very much too soon.

The Court: I should think you would be in a much better position if you did not do anything. Now you are taking part in the proceedings.

Mr. Wegman: No, I am not.

The Court: You are saying, "We won't be ready on that day." That is an indication that you are not going to be ready. I will give you what you want. You may have it.

Mr. Wegman: Thank you.

The Court: I will have it noted on the record, just what you said.

Mr. Wegman: Now, may I ask your Honor for one thing more, not having to do with this arraignment. May I ask your Honor to direct that this defendant's wife and brother may be permitted to see him while he is in this Court?

The Court: Certainly.

Mr. Wegman: Together with counsel.

[fol. 32] COUNTY COURT, KINGS COUNTY, PART II

Indictment No. 23855, Murder, First Degree

THE PEOPLE OF THE STATE OF NEW YORK

against

LOUIS BUCHALTER, alias "LEPKE", EMANUEL WEISS, alias
"Mendy Weiss", Philip Cohen, alias "Little Farvel"
and Louis Capone, Defendants

Brooklyn, N. Y., August 4th et seq., 1941.

Thomas F. Darcy, Julia A. McGowan, Official Sten-
ographers.

[fol. 33] Before: Hon. Franklin Taylor, County, Judge,
and a Special Jury

Appearances:

For the People: Hon. William O'Dwyer, District Attor-
ney, by Burton B. Turkus, Esq., Solomon A. Klein, Esq.,
Lewis Joseph, Esq., Assistant District Attorneys.

For the Defendant Buchalter: Hyman Barshay, Esq.,
Bertram Wegman, Esq., Jesse Climenko, Esq.

For the Defendant Weiss: Alfred J. Talley, Esq., James
J. Cuff, Esq., M. M. Kriendler, Esq.

For the Defendant Cohen: Saul Price, Esq.

[fol. 34] *For the Defendant Capone:* Leon Fischbein,
Esq., Emanuel Rosenberg, Esq., William Murphy, Esq.

Julia A. McGowan, Thomas F. Darcy, Official Sten-
ographer.

Mr. Turkus: The District Attorney, sir, is ready.

Mr. Talley: Defendant Weiss is ready.

Mr. Barshay: I have a statement to make for the record
which I would like to make not within the hearing of the
jury. I can read it directly to Miss McGowan.

The Court: Step up—all counsel.

(The following occurred at the bench, not within the hear-
ing of the jury.)

Mr. Barshay: The defendant Buchalter objects to the
jurisdiction of this Court. He has never acceded to this
Court's jurisdiction and maintains that this Court did not

and could not acquire jurisdiction over this defendant. This defendant, by an order and judgment of the United States District Court for the Southern District of New York, is incarcerated in the United States penitentiary at Leavenworth, Kansas, for a term now of fourteen years before [fol. 35] the commencement of this trial. While serving the said term in the said penitentiary this defendant, against his will and without his consent, was removed therefrom by a United States Marshal on or about May 7, 1941, and was deposited in the Federal House of Detention on West Street in the Borough of Manhattan, City and State of New York. He has been and still is confined there. This Federal House of Detention is not a United States penitentiary. Upon the arraignment of this defendant on the charge of murder in the first degree as set forth in this indictment, counsel for defendant in open court challenged the jurisdiction of this Court and refused to submit to this Court's jurisdiction over him. He refused to plead to the indictment and over his protest and against his will and against the will of his counsel there was entered on the record of this court a plea of not guilty to this indictment. This defendant has not been pardoned by the President of the United States nor has his sentence been commuted by the President of the United States.

This defendant refuses to answer ready, because he has not been afforded a reasonable opportunity to properly prepare his defense. He, by virtue of that, maintains that he cannot receive a fair trial.

Counsel for this defendant and this defendant, after a thorough investigation, have deemed it necessary, in order [fol. 36] to prepare properly for the trial here, to interview one Jacob Shapiro, a former business associate of this defendant, now a federal prisoner. Counsel have applied for permission to interview the said Jacob Shapiro to the Director of the Bureau of Prisons in Washington. Jacob Shapiro, in the opinion of counsel, could and would give information vital and essential to the defendant's defense. Said permission was arbitrarily refused. By virtue of such refusal the defendant has been deprived of a fair opportunity to prepare his case.

We may further add, sir, that we obtained a petition and writ of *habeas corpus* which was argued before a judge of the Federal Court, and he denied our application and an appeal was made to the Circuit Court and the learned

judge there advised us that all the rights and all the points to protect our rights that we raised there were a matter for the State courts and should be raised here. Whether it is right or wrong, we are not passing upon. We raise those points here now, sir, and we ask permission to offer in evidence here a copy of the petition and writ of *habeas corpus*, which we have already printed and which will be here very shortly.

The Court: You may consider it marked. Where is Shapiro?

Mr. Barshay: Shapiro is in the Federal penitentiary [fol. 37] out West.

The Court: Where?

Mr. Barshay: Springfield, Missouri.

Mr. Turkus: Is that an institution for mental defectives?

Mr. Barshay: No, sir, not to my knowledge.

Mr. Climenko: If an answer to Mr. Turkus's question is appropriate, I may say this, if your Honor please: I understand that the institution in which Shapiro is presently incarcerated is in the nature of a hospital prison, but there is no basis for any inference or intimation that Shapiro is not thoroughly mentally competent.

Mr. Turkus: How long has he been in that institution?

Mr. Wegman: The writ of *habeas corpus* was sued out in Atlanta, Georgia, for Shapiro, who was at that time incarcerated in the Federal penitentiary in Atlanta. The United States District Court expressed the opinion that the incarceration of Shapiro in the Federal penitentiary was improper, his sentence was such that his incarceration should have been in a jail and not in a penitentiary, so before an order was made on the writ, the Director of Prisons transferred Shapiro from the penitentiary at Atlanta to the Federal Prison at Springfield, Missouri, which [fol. 38] is not a penitentiary, and where his incarceration would have been proper under the sentence which was imposed. It has never been suggested otherwise, and there can be no question about it, Shapiro is mentally competent. It has never been intimated otherwise.

The Court: If that is a hospital prison, do you know for what he was hospitalized?

Mr. Wegman: If your Honor wants an expression of our opinion, it was because the writ of *habeas corpus* would have required his transfer out of the penitentiary, and he was put in there as a device to avoid such an order on the

writ. He is perfectly competent mentally, and from the conference I had in Washington with the representative of the Attorney General, there was no suggestion whatsoever that there was any reason other than the fact that they said that they did not believe that they were required to grant it, and unless an order of the court required them to, they would not. No suggestion was ever made that it was because of his condition, because other prisoners have seen him.

The Court: He is held incommunicado?

Mr. Wegman: Incommunicado.

The Court: Has anybody attempted, on behalf of this defense, to interview him at the prison?

Mr. Wegman: We have asked permission for such an [fol. 39] interview and have been refused that permission specifically, flatly, bluntly.

The Court: In writing?

Mr. Wegman: In writing as well as orally.

The Court: Are there any regular visiting days?

Mr. Wegman: Only to those who have been granted permission. One cannot visit a Federal prisoner without permission, unless it is a member of the immediate family, and even members of his immediate family have been required to obtain permission in advance.

The Court: Have you made formal application to be advised as to the pathology?

Mr. Wegman: No question about pathology.

The Court: But it is a hospital prison.

Mr. Wegman: It is a prison and also used as a hospital.

The Court: There must be a clinical record if he is a patient.

Mr. Wegman: When I spoke to Mr. Bennett he told me there was absolutely nothing wrong with him.

The Court: To whom?

Mr. Wegman: Mr. Bennett, Federal Director of Prisons.

The Court: Have you made application in writing to be advised if there is a pathology?

[fol. 40] Mr. Wegman: We made application in writing for permission to visit him, and we were told they could not see why that privilege should be afforded. I will be glad to offer that letter in evidence.

The Court: That is all right, of course, but what I am trying to get at is whether what you state as to your opinion concerning the reason for the transfer is with some

sound basis or whether it is merely a suspicion. The question is, have you checked up on any clinical record that there may be in the files of the institution?

Mr. Wegman: When the statement was made in the answer to the writ of *habeas corpus* in the Federal Court, that Jacob Shapiro was incarcerated in a hospital for mental defectives, I challenged that statement, and there was prompt assurance given by the United States Attorney that it was not intended to intimate that there was anything whatever wrong with Jacob Shapiro.

The Court: But you do not know whether there has been any Binet-Simon test, and if so, what the intelligence quotient is?

Mr. Wegman: I do not know whether there has been any clinical record whatsoever. I cannot answer your Honor on that.

The Court: Is that all on behalf of this defendant?

Mr. Barshay: One more thing, sir: We have also applied [fol. 41] for permission for the defendant Buchalter to interview his co-defendant Weiss, who was incarcerated in the same Federal house of detention. That permission was applied for in Washington, and that permission was denied.

Mr. Turkus: But I understand that was mandatory.

Mr. Barshay: It was denied. No permission was ever given to defendant Buchalter to interview the defendant Weiss, and to this day they have not had any opportunity to consult and properly prepare their defense. We did not ask for permission to see Mr. Weiss. That was an answer by way of compromise that the Director of Prisons gave to us. He said, "You will be permitted to interview Weiss." We did not want to, nor did we seek to interview Weiss. We wanted defendant Buchalter, who was there in the identical building and who had an interest in properly preparing his defense, to interview the defendant Weiss. That permission was denied.

The Court: You mean, in addition to the right of the defendant to confer with his own counsel, that he is entitled to interview witnesses or co-defendants?

Mr. Barshay: Co-defendants.

The Court: That that is an inherent right?

Mr. Barshay: We press that, sir.

Mr. Climenko: I think we might examine witnesses too, [fol. 42] unless there was some reason having to do with

the safety of the prisoner, or the manner of his incarceration might be endangered by such an interview. Unless some such reason should intervene, I think that a prisoner charged with murder in the first degree ought to be allowed to interview prospective witnesses on his behalf.

Mr. Barshay: Those two things, your Honor, were specifically sought and were specifically refused. We say that was an arbitrary refusal.

The Court: You do not concede, then, that it is possible that the defendant's right in regard to interviewing of co-defendants and witnesses is properly reposed in counsel?

Mr. Climenko: There are some things that counsel cannot do.

The Court: You mean defendant is entitled to directly interview co-defendants and witnesses?

Mr. Climenko: The charge is that this murder was committed just about five years ago. We feel that since that time many things fade out as the years go by. Counsel knows nothing about them. In a review of anything connected with the life of each of the defendants at and about the time, all that counsel can do is listen to the defendant's recollection, but one defendant talking to another defendant with whom he was associated at the time, or defendant [fol. 43] brought to a witness with whom he was closely associated at the time, may have his recollection refreshed, and that may work the other way, too, as to events which transpired which may be of vital importance to the defendants. We are not talking about a crime that was committed last week or last month.

The Court: Is that all that you desire to state for the purpose of the record?

Mr. Barshay: That is correct.

The Court: To see that Buchalter's rights are fully protected?

Mr. Barshay: That is correct.

The Court: As to Weiss?

Mr. Talley: I answered ready on Weiss, but I join in the application that has been just made on behalf of defendant Buchalter on the ground of jurisdiction.

The Court: That is for any collateral benefit?

Mr. Talley: For any benefit of any kind, direct or collateral. We have not been permitted to confer one with the other, that is, Buchalter has not been permitted to confer

with Weiss and vice versa, in the detention pen in which they have been confined since their arrest.

Mr. Turkus: That does not include the Shapiro——

Mr. Talley: On the general ground on which the application [fol. 44] is made, for defendant Weiss, I join in the application.

The Court: Philip Cohen?

Mr. Price: Ready, subject to a motion for a severance, which I intend to make as we go along.

Mr. Talley: The answer of "ready" on behalf of Weiss is dependent upon the same motion, with the Court's permission. A motion for severance shall be made at the proper time.

Mr. Price: The defendant Cohen also joins in the Buchalter motion in so far as jurisdiction is concerned, so far as the matter may in any way collaterally adhere to his advantage or otherwise.

The Court: Louis Capone?

Mr. Fischbein: Defendant Capone joins in that motion made by defendant Buchalter with the same force and effect that the others have indicated. I also move at this time for a severance of the indictment as against Louis Capone, and for a separate trial.

The defendant made a motion some time ago before Judge Brancato, who heard the application, and he also heard the application of opposing counsel—I believe it was Mr. Turkus who appeared in opposition. That motion was denied, with leave to renew before the trial. Judge, there was an [fol. 45] order entered to that effect. I am renewing that application.

The Court: Have you a copy of that order?

Mr. Fischbein: No, I have not. It is already on file with the Court.

The Court: With leave to renew?

Mr. Fischbein: With leave to renew without prejudice, and I am submitting another affidavit in support of that motion besides the affidavits and the exhibits that have been originally submitted on behalf of that motion.

The Court: But other than the jurisdictional objection, in which you join, and the motion for severance, you are otherwise ready?

Mr. Fischbein: I am otherwise ready, except that I am joining generally in the motions made by other counsel as they apply to the defendant Louis Capone.

The Court: Very well. I take it in regard to Buchalter that apart from the jurisdictional objection the defendant is ready?

Mr. Climenko: Preserving our record.

The Court: The same applies to Philip Cohen?

Mr. Price: Ready subject to the motion that I intend to make for a severance.

The Court: Very well. Suppose we first take the motion for severance by Philip Cohen.

Mr. Price: I have discussed the matter with the District [fol. 46] Attorney in great detail. It was my opinion that the interests of justice as far as two defendants are concerned, and particularly the defendant Cohen, could best be served by consenting to a separate trial as far as Philip Cohen is concerned. I therefore, without stating any further reasons at this time, make the motion on behalf of Philip Cohen for a separate trial and a severance as to him.

Mr. Turkus: May the District Attorney state his position?

The Court: Yes.

Mr. Turkus: I am reading over a paper that Mr. Barshay read from.

Mr. Barshay: I did not follow word for word.

Mr. Turkus: May I inquire through the Court of counsel for the defendant Buchalter whether or not any application was made to this Court for an interview with the alleged witness Jacob Shapiro on behalf of Buchalter?

Mr. Wegman: If your Honor pleases, the answer to that is no, and the reason for that is manifest. The reason is that both the defendant Buchalter and the witness Shapiro are persons who are prisoners at this time. Then, the defendant Buchalter is in the custody of the United States Government, and they are subject to the control of Mr. Bennett, the Director of Federal Jails, and if I understand the [fol. 47] position of Mr. Turkus's office, they have stated that their office and that the State authorities generally could not intervene in that situation. With the greatest respect to your Honor's court, I do not see how this Court could control that situation, so no application has been made. As we understand it, there would have been no possible efficacy in making such application.

Mr. Barshay: We also had a parallel, sir. When I was first retained in this case and filed my notice of appearance in this court, I was refused permission for a period of three

weeks to see my own client. I did not get permission from this Court, nor could I seek it. I had to get permission from Washington, and I did get it only after the argument before Judge Conger, who suggested to the United States Assistant District Attorney in charge of the argument that forthwith I be given permission, and then it was given. This Court could not and did not give permission to counsel.

The Court: The question, of course, is an interesting one and maybe I can state a hypothetical case, Coanselor, and get your reaction to it. Supposing a man, having committed a capital crime and fearing detection, indictment, and conviction, commits a crime for which a term of imprisonment [fol. 48] may be imposed, for the purpose of procuring his incarceration until such time as, by reason of the death or other possibility, of witnesses, a conviction may be impossible of the major crime, that is the capital crime, would it be the policy of the law, should it be the policy of the law, to permit such manipulation?

Mr. Wegman: With the State there is no question. I assume that your Honor's question was based on a prisoner or a person who committed an offense so as to be incarcerated in a Federal penitentiary in order to avoid a trial in a State court on a capital charge, because if they were both State courts there would be no question about it, both State offenses, that the State court could try him for the capital offense.

In the case of *Ponzi v. Fessenden* it is ruled specifically that the Attorney General of the United States has the authority and the discretion and the power to turn a Federal prisoner over to a State court for trial in the State court of an indictment there pending, but the Supreme Court of the United States said that he could do so only upon condition that he provide the prisoner with the full opportunity to prepare and present his defense, that subject to that limitation he could turn him over for trial.

The Court: But he cannot give him absolute freedom. [fol. 49] Mr. Wegman: Oh, no, but he has to give him a full opportunity to prepare his defense. Our contention here is that in this instance, in the case of this defendant, the Attorney General has not acted within the limitation of the ruling of the Supreme Court in the *Ponzi* case; that he has turned him over to this Court for trial, but that he has deprived him of the opportunity to prepare and present his defense.

The Court: Well, the question concededly is one as to what is meant by "opportunity to prepare and present his defense." There are certain restrictions placed upon prisoners, and the Court cannot go into the reason for those penal restrictions. May it not be fairly assumed that reasonable restrictions are permissible and that so far as a defendant is concerned who is presently under incarceration, serving a sentence, he cannot be heard to complain if the restrictions are reasonable, because he himself is estopped as a matter of law by his own conduct in committing the crime that is the subject of the restriction, because of the restriction?

Mr. Wegman: May I answer your Honor on that?

The Court: Yes, I am only asking a question.

Mr. Wegman: Yes, and I would like to suggest my answer to that question, and that is that the Attorney General can take his choice; either he can refuse to deliver the [fol. 50] prisoner over for trial on the other indictment because he wants to subject him to restrictions having to do with his then present incarceration, or he can waive those restrictions to the extent that such a waiver is necessary in order to permit that prisoner to prepare his defense against the other indictment. The Attorney General cannot, with the one hand, hand the prisoner over to the State court and say, "Here, try him," and with the other hand prevent that prisoner from an opportunity to prepare his defense, as it necessarily would have to be prepared if he is to have a fair trial. I suggest, your Honor, that it is of the essence of a fair trial that proper opportunity for preparation be given and if that proper opportunity be not given, there cannot be a fair trial, no matter how impartial the presiding judge may be; no matter how eminently fair his rulings may be, no matter how perfect his conduct of the trial may be, there cannot be a fair trial without a proper opportunity to prepare a defense to present.

Mr. Talley: I want to make my motion for severance when your Honor is prepared.

Mr. Klein: There have been several statements made that might be misleading. I would, with your Honor's permission, like to state the proceedings that have taken place, and state them briefly, on these very questions before today.

When the Attorney General of the United States turned over Buchalter to the New York City detention headquarters for the purpose of trial on this murder indictment in Kings County, two lawyers appeared for him, Mr. Wegman and Mr. Climenko. The regulations of the Federal jail require that only two lawyers be permitted to visit the defendant. Thereafter, Mr. Barshay became a third counsel, and for a temporary period of time he was not permitted to interview Buchalter. Now, the next step, your Honor, that was taken was this: A writ of *habeas corpus* was sued out in the Federal District Court in which writ it was argued that Buchalter could not be tried in Kings County on the ground that we could not acquire jurisdiction over him. It was also contended that he was denied the right to a fair trial because Mr. Barshay was not permitted to interview Buchalter. Now, the writ of *habeas corpus* was dismissed, and the opinion was written by District Judge Conger.

Parenthetically, I may suggest that if any papers have been filed in the Federal proceedings, that opinion be included in the papers.

Mr. Wegman: I have no objection to your filing it, Mr. Klein.

Mr. Klein: In that opinion Judge Conger in substance [fol. 52] stated that we do have jurisdiction, and the authority on which the decision was based was *Ponzi v. Fessenden*, which was decided by the Supreme Court of the United States.

Incidentally, the argument of Mr. Wegman, counsel for Buchalter, on the ground that there was no jurisdiction, was based upon the contention that Buchalter is to be kept in the penitentiary and that New York City had no penitentiary, therefore he could not be transferred here.

After the decision of Judge Conger dismissing the writ, Mr. Barshay was permitted to interview Buchalter together with his co-counsel, the privilege being granted to them despite the jail regulations.

Thereafter they sued out an appeal to the Circuit Court of Appeals of the United States Circuit, and on that appeal, your Honor, they included additional arguments why the trial should not proceed in Kings County. In addition to the point that this Court had no jurisdiction, they then, for the first time, on appeal, added the ground that they could not interview Jacob Shapiro. I was present at the

udge presiding was Judge Learned Hand. from the bench that the arguments raised were extremely absurd. In answer to that they wanted the right to interview Shapiro and that the denial of the right of a fair trial, Judge Learned Hand said that that is a point that can be addressed and taken care of by the State Court. In my statement, I suggest to your Honor that the arguments were made to this Court requesting the writ of *habeas corpus* for Jacob Shapiro, and an order granting the writ entered to that effect. I think that the Court would honor the order of this Court through the State Court's counsel to interview Jacob Shapiro, if necessary. They have not disclosed what the

the Court cannot make the order; the Court must.

and I think that request would be honored. If the request is made. Put that on the record. I believe I tried to straighten out the record and state all the facts. One other statement I would like to make in the appeal to the Circuit Court of Appeals. I tried to get a stay of this trial. Judge Hand dismissed the writ of *habeas corpus* and did not stay the courts of the state of New York.

May I answer that, if your Honor pleases, Mr. Klein has served to confuse the record with his misstatements of fact which have no basis in fact, and which ignore what actually happened. I would like to have your Honor have the

I should like to state them, and I would like your Honor's permission to have Mr. Klein interrupt me to make one statement that is the least bit true. I will state the line of fact, so that there will be no question. I will be glad to have him interrupt me from

place, on the petition for a writ of *habeas corpus*. I suggest that I argued that this Court should grant the writ because the defendant Buchalter should be released from the Federal penitentiary, and he was in the Federal penitentiary. Mr. Klein neglects to state a point very clear in the argument at the time it was so understood by Judge Conger, and

by everybody, presumably, except Mr. Klein, that that point was being raised only because of the fact that technically it appeared to be sound, and therefore ought to be put in the record, but it would be waived if we could get this permission to interview Jacob Shapiro, if the defendant [fol. 55] Buchalter could have permission to interview witnesses.

Mr. Klein says that I put that in the application to the Circuit Court of Appeals for the first time. Mr. Klein is mistaken. Let him read the papers. Let him read the petition for the writ, and he will find it is there very definitely. He may have overlooked it, but it is there. There was nothing that was set forth in the application to the Circuit Court of Appeals that was not contained in the writ, and, what is more, we did not ask the Circuit Court of Appeals to stay this trial. That was not our application. I should like to have that understood. We asked there, in the alternative, either a stay of the delivery of the prisoner or the immediate argument of the appeal on the merits, and I had then in court, two days after Judge Conger's order was signed, the papers on appeal, ready to submit to the Court.

The Court: Isn't this somewhat academic?

Mr. Wegman: It is.

The Court: Because I am not interested—

Mr. Wegman: That is correct.

The Court: —in that writ.

Mr. Wegman: I state it only because Mr. Klein has misstated and perverted those facts and has attempted to create an atmosphere and an inference which is unwarranted. [fol. 56]

The Court: It means nothing.

Mr. Wegman: Very well, your Honor.

Mr. Climenko: I want your Honor to understand there has been no appeal on the merits in the Circuit Court from the order of Judge Conger dismissing the writ and one part of the application that we did make to Judge Learned Hand was for an immediate hearing, and that application was denied. I know this is really in general academic, but I did not want your Honor—

The Court: There has been no application for writ of error?

Mr. Wegman: There cannot be.

The Court: I did not think there could be.

Mr. Climenko: There has been no hearing on the merits in the Circuit Court.

The Court: Has everybody been heard? I want you all to have every opportunity to get in the record everything you want to get in. When you are through let me know.

Mr. Talley: Will your Honor hear my motion for severance?

The Court: Yes.

Mr. Talley: On behalf of defendant Weiss I now do move that indictment be severed from that of the others [fol. 57] that have been called for trial, and a separate trial be granted the defendant Weiss, upon the ground that it would not comport with the administration of justice to have Weiss, the client whom I represent, tried together with Louis Buchalter, generally known as Lepke, who is hailed throughout the press of not only this county but of the city, and I dare say the country at large, as the leader of a band that has been designated and is being designated today and for the past months as what has been known in newspaper parlance as "Murder, Incorporated." The publicity that has been given to the defendant Buchalter is such that it would undoubtedly prejudice the rights of the defendant Weiss if put upon trial with him. I therefore and upon that ground move that there be a severance of the Weiss indictment from that of the Buchalter indictment.

The Court: As to one person it has not registered, because I have not even read the indictment. I do not know just what this charge is yet. So far as the jury is concerned, of course, it may be fairly anticipated that there will be a great many challenges for cause which will have to be sustained, but in the weeding-out process of jurors it may be fairly assumed that twelve men will qualify if we work long enough in the selection of the jurors. If everything has been said—

[fol. 58] Mr. Fischbein: The affidavit that I submitted to the Court, may I have that made part of the record in this case?

The Court: Yes, it will be filed now with the clerk and entered on the clerk's minutes, but I want to read it. If everything has been orally stated—

Mr. Moe Levy: This is academic, but the indictment contains the name of Harry Strauss—

The Court: That is not academic.

Mr. Levy: In this trial, and I, having been assigned by your Honor, want to make an application that the indictment be severed and presumably dismissed.

The Court: Personally I know nothing about it. I think I know why you make that motion.

Mr. Levy: There will be no application made, Judge.

Mr. Talley: Will your Honor pass upon my motion, or are you reserving decision?

The Court: I did not want to hold counsel here before making an announcement because I want nothing said.

Is everybody through?

Mr. Barshay: Yes.

Mr. Klein: On the motions for severance, as your Honor knows, Judge Brancato denied Cohen's motion with leave to renew. There is no authority for granting a separate trial upon the grounds urged by defendants' [fol. 59] counsel. I submit the motion should be denied.

Mr. Talley: There is ample ground for the Judge to grant a severance whenever in his judgment justice requires.

The Court: You have no papers?

Mr. Talley: Mine is an oral motion.

The Court: Then, if counsel will be seated, I will read this affidavit.

(All counsel returned to the counsel table.)

The Court: Are there any answering affidavits?

Mr. Klein: No, your Honor.

Mr. Barshay: It was just served at the time they were handed to the Court, and the District Attorney had no opportunity to respond.

Mr. Fischbein: Your Honor, I had intended to make this orally, but this morning, because of the time I had, I prepared this affidavit.

The Court: Is there any objection to reasonable opportunity for answering affidavit?

Mr. Fischbein: No objection to that.

The Court: Submit today.

The jurisdictional objection is overruled as to each defendant.

All motions for severance are denied.

Mr. Talley: May I note an exception to both your [fol. 60] Honor's rulings?

The Court: Yes.

Mr. Talley: In both cases on behalf of defendant Weiss.

Mr. Wegman: If your Honor pleases, may we on behalf of defendant Buchalter note exception to your Honor's ruling?

The Court: Yes.

Mr. Fischbein: On behalf of defendant Capone may I note an exception to your Honor's ruling?

The Court: Yes.

Mr. Price: I should like to step up to the bench for a moment with the District Attorney.

The Court: No, you do not have to. This is only exception.

Mr. Price: I note my objection to your Honor's ruling and also note my exception.

The Court: Are the defendants seated in the order in which the names appear upon the indictment?

The Clerk of the Court: Yes.

The Court: How many jurors have answered?

The Clerk of the Court: 224.

The Court: The case is marked ready as to all defendants who are here.

In calling for excuses of jurymen we must avoid [fol. 61] confusion. For that reason, no juror will be permitted within the rail to present his excuse until the Court so announces, and then only one at a time.

First the Court calls for those who have legal excuses to stand and remain standing until counted by a court attendant. Will the court attendant please count those who are standing? Be sure to be accurate.

The Court Attendant: 84.

The Court: Please be seated.

Now will the clerk ask those who have not been able to get into the room because of overcrowding, who have excuses, to please step into the room?

The Court Attendant: 3 from the other room.

The Court: One thing more, the Court asks that those whose excuses are based solely upon vacations will now stand, solely by reason of summer vacation.

Now will the clerk count those?

The Court Attendant: 22.

The Court: Then according to the Court's figures, of the 250 talesmen, 224 have appeared, 26 have not appeared and no reason is given for their non-appearance. Added to those 26 we have 87, making 113 have not appeared or, ap-

pearing, offered excuses. This constitutes a 44 per cent of the panel. In regard to those whose excuses are for summer vacation only, the Court sympathizes with [fol. 62] those who want vacations, because the average man takes only a summer vacation, and that is the mecca to which he looks during eleven months of work per year, but the Court cannot grant that indulgence except in individual cases, much as the Court would like to grant those excuses. One at a time those offering excuses will step within the rail at the end indicated by the jury box, one at a time. All others will remain seated.

To avoid confusion, the Court will hand back to each juror his notice and note the excuse. I am reserving decision on all.

(Excuses of talesmen were then offered to the Court.)

The Court: A recess will be taken to two o'clock. The defendants are remanded.

(A recess was thereupon taken until two o'clock.)

[fol. 63] Afternoon Session (Trial resumed)

Mr. Fischbein: During this proceeding of listening to excuses of jurors, I want to know whether the defendant Louis Capone can be excused; he is being treated for a cardiac condition at the present time.

The Court: How can I excuse him when the defendants are on trial?

Mr. Fischbein: This is not part of the trial.

The Court: I am taking no chances on an objection being made and an exception taken on that point.

(From 2:10 p. m. to 4:20 p. m. excuses from the panel were heard.)

The Court: State on the record that on each application the ground therefor has been noted by the Court. At the present time there are 16 denials, 18 excuses, reserved decision on 95; total 129. Did not answer, 26. Grand total 155. This leaves only 95 present and agreeing to serve out of a panel of 250. On those where decision has been reserved, the reasons will have to be classified and an announcement made after proper consideration has been had. This cannot be done this afternoon. The Court can, this afternoon, start the trial by calling one juror, and then the case can go over until tomorrow morning for announce-

[fol. 64] ments in matters where decision was reserved, but the juror will not be examined this afternoon. Call one juror.

(Clerk Childs calls Woolsey W. Conlin—2576.)

The Court: The examination of this juror will proceed in the morning after the Court shall have made announcements on those applications which are yet undecided. Those who have presented excuses meritoriously—and many of them are meritorious—the Court sympathizes with them, but thinks that many of the excuses that were offered are because people do not want to work in August. Defendants remanded.

Mr. Talley: May I make application, if your Honor please, with respect to the defendant Weiss? May I have your Honor's permission that he be interviewed very briefly by a brother and another who are here who would like to confer with him? May they confer with him before he is taken out of the building? I refer to the defendant Weiss, whom I represent.

The Court: Is he kept in Raymond Street Jail?

Mr. Talley: No, he is in the Federal House of Detention, in Manhattan.

The Court: Have they been able to confer with him there?

Mr. Talley: Yes, sir, once a week.

The Court: How long will this conference take?

[fol. 65] Mr. Talley: I would say fifteen or twenty minutes, probably.

The Court: It will have to be under guard, you know that?

Mr. Talley: Yes, I know that.

Mr. Turkus: We have no objection.

The Court: Speaking about arrangements, there is a private pen upstairs that is used for women. Weiss can be taken in there so as to be segregated.

Mr. Talley: Will your Honor so instruct the clerk or officer?

The Court: Yes, the conference not to exceed half an hour.

Mr. Talley: Yes.

Mr. Barshay: I would like to make a similar application as to Buchalter. You can limit it to fifteen minutes, if you want to.

The Court: Can you wait until tomorrow?

Mr. Barshay: She has been waiting in the hall all day.

Mr. Turkus: We will consent to it, your Honor.

The Court: I am trying to accommodate, as far as physically possible, but of course precautions will have to be taken so there will be a proper distance between them, the [fol. 66] same as at the jail, where there is a fine screen. Consultation to be held at a certain distance, so there will be no passing of anything, and under guard, in the women's pen.

Mr. Turkus: Will you state the names on the record, please?

Mr. Talley: Sidney Weiss and Blanche Weiss, the wife.

The Court: Everybody else will return at ten o'clock tomorrow morning.

(A recess was thereupon taken until Tuesday, August 5, 1941.)

[fol. 67]

Brooklyn, N. Y., August 5, 1941.

Trial Continued

Mr. Turkus: There are several applications that the District Attorney would like to make without the hearing of the panel and at the bench and I ask that your Honor ask counsel to group at the bench as they did yesterday when defense motions were made.

The Court: All right.

(The following took place at the bench, not within the hearing of the jury).

Mr. Turkus: It might reasonably be expected when the case was set down for a summer session there might be some reasonable difficulty in selecting the jury. The situation that developed yesterday was unprecedented. More than half the panel desired to be excused. Under the circumstances I think the interest of justice is conducive to an adjournment of the case until after Labor Day. In addition, there was an application made to your Honor and an exception taken to a ruling in connection with one Jacob Shapiro, alias Gurrah, at one time an associate of the defendant Louis Buchalter, alias Lepke. In that connection it was stated here that the Attorney General of the United States arbitrarily refused to permit counsel for the defendant Buchalter to interview Gurrah or Shapiro.

Mr. Wegman: It would be much easier to call him Jacob Shapiro.

[fol. 68] Mr. Turkus: I cannot understand the sensitivity on the alias. The District Attorney is addressing the Court.

The Court: There is no jury here.

Mr. Turkus: Nobody can be biased.

Mr. Talley: Do not start off so early in the case.

Mr. Wegman: Reserve that for later on.

The Court: What is the point?

Mr. Turkus: The point is this: I ascertained from inquiry that no application had been made to this Court for a permissive order to interview Gurrah or Shapiro. If that application is made in good faith, and if the defense, that is the defense in so far as the defendant Buchalter is concerned, are making a bona fide attempt to interview this man Shapiro on the theory that he may be a witness and is a vital and necessary and material witness for the defense, then by all means the District Attorney will consent to the granting of a permissive order of this Court, not a mandatory order because as it was pointed out this Court has no power to grant a mandatory order. The situation may be entirely different with a permissive order of the Court consented to by the District Attorney and I do not want the record here to stand with an exception to the defendant Buchalter which may jeopardize the record of the case in the event that there is a conviction.

The Court: But the man is out in the far West. That [fol. 69] adds to the difficulty of counsel. Why cannot he be brought to Lewisburg which is only a few hours away by automobile?

Mr. Turkus: That is something that can be arranged by the Attorney General.

The Court: It will be arranged if you request it.

Mr. Turkus: We are willing to do everything on our part to expedite the interviewing of this man who they say is a material witness, if in fact this is a bona fide contention.

The Court: What kind of a record would there be, should there be a conviction, that would go up with the statement that witnesses were held incommunicado so far as the defense is concerned? He should be available as a witness.

Mr. Turkus: The record may not indicate that.

The Court: It should be avoided.

Mr. Turkus: The Attorney General, as I understand, has exclusive jurisdiction over his prisoners.

The Court: You will make a request, will you not?

Mr. Turkus: If the application is made here for a permissive order to interview Shapiro, the District Attorney will consent to it.

The Court: Will you request to have him brought to the nearest available place of Federal confinement?

Mr. Turkus: We will certainly make that request.

Mr. Climenko: It is right in the Borough of Manhattan.

The Court: That is better still.

[fol. 70] Mr. Turkus: We will make any request of the Attorney General which will make it less difficult for defense counsel to interview a man who they say is a material witness, if that is a bona fide request.

Mr. Climenko: May I ask Mr. Turkus to call the Attorney General this morning? We have made many telephone calls and trips to Washington.

Mr. Turkus: The District Attorney has not so much as made an application for a permissive order.

The Court: If the application is made, it will be granted.

Mr. Turkus: And it will be consented to by the District Attorney.

Mr. Wegman: May I ask what is before your Honor at this time?

The Court: What is that?

Mr. Wegman: Is Mr. Turkus discussing Shapiro?

Mr. Turkus: Yes, discussing both matters.

Mr. Wegman: We will submit such an order and one of defense counsel will go to Springfield, Missouri, if that is necessary, or the prisoner may be brought to New York. It will take at least three or four days to impanel a jury. Mr. Klein made a statement in the Supreme Court, in open court, in which he accused us of seeking delay.

The Court: Who had it set down for August?

Mr. Wegman: The District Attorney insisted on July [fol. 71] 14th. I asked to have it go over because that was an inadequate time. We were then charged with using the process of the court in order to get an adjournment. When we made our motion for a change of venue, Mr. Klein in the Supreme Court charged us with making the motion not in good faith but wholly because we wanted delay. Every time we have been in court, that speech has been made for the benefit of the press and it has appeared in the press repeatedly. We have now decided we will not be accused any further. We are as ready as we will ever be and if we

can get permission to interview Jacob Shapiro, we will not delay the trial one minute.

Mr. Talley: I cannot quite appreciate the Shapiro application as a ground for adjourning this case in behalf of the District Attorney. That can readily be taken care of, possibly before the case goes into trial at all.

The Court: I do not understand it as a ground. That is supplementary.

Mr. Talley: As to the application for the adjournment, I respectfully submit in the greatest seriousness, it has given me much concern. If this case is adjourned at all, if it does not go on delay—there is a juror in the box; he is there; the District Attorney has been responsible for setting this case at this time in the month of August—I submit this to your Honor, if this case goes over at all, I ask that it go over until the November term and my reason for [fol. 72] making that request is this, that it is very much against the interests of justice, the substantial fundamental interests of justice, that this case be tried at this time for the reason that the distinguished District Attorney of this county, primarily because of the publicity that has come to his office through cases that would be claimed to be allied with this, has been nominated for the office of Mayor of the City of New York and from now on, from today up to Election Day, will be necessarily and properly engaged in a campaign for successful election to the high office for which he has been nominated.

I object to this case, in behalf of my client, being made a foot-ball of a political situation here in this county and city. I do not think your Honor with your innate sense of fitness should be made to go on. Even this morning, as I did yesterday morning, I bought the New York American and there I find the glorification of Mr. O'Dwyer as the man who broke up Murder Incorporated, which will be claimed in the very opening of this case to be identified with the defendants that are now on trial. If the case goes over until September, it certainly can skip one term thereafter and go over until November. I will be ready the day after Election. I will be ready to proceed to trial.

Of the talesmen here called in this room, many of them if not most of the citizens of Brooklyn, read these stories, [fol. 73] rather lurid, in the American which has been running them for the past four or five weeks, and in yesterday's edition and in Saturday's edition the names of persons

who will be called or identified in this case have been mentioned, and I say it is too great a risk to take, for your Honor to take, and certainly too great a risk for us to take with our responsibility representing the defendants. The minds of jurors will be influenced by the fact that the prosecutor in this case is a candidate for Mayor, that all of the matters that will be sought to be developed by his able assistants in this trial have been published in a lurid fashion in one of the New York papers. Undoubtedly, and whether they admit it or not, they have read or heard about this case.

Going out of this courtroom yesterday afternoon I saw in a shop near the court large placards of the theatrical type advertising this particular paper, for which I have the highest regard and for its management I have the highest regard, truly, advertising the life of Bill O'Dwyer, in the language of the poster; and I find tacked on telegraph poles throughout the city and on the sides of trucks, in very large lettering, the story that is identified with this trial, published daily in the newspaper with no doubt the exaggeration that we might assume newspapers give about this case. I say it is too important when men are indicted by the District Attorney of this or any other county for murder [fol. 74] in the first degree, it is too important to the fundamentals of American justice as you see it and as I see it to have the possibility of any inference where four men are on trial on a charge of murder in the first degree.

Let us get down to fundamentals. The District Attorney insisted upon this trial going on in August. All of us have been discommoded more or less. Our summer plans are all prepared for this particular month. This question about the jurors, with all due respect to my friend Mr. Turkus, we can go ahead and pick a jury. I am satisfied. I did not want to try this case in the month of August. My experience has been it is extremely difficult for the attorneys and jurors and for the Court himself to try cases in the month of August. I once tried it in the Court of General Sessions in New York. We thought we would clear up a prison calendar by sitting in August. The result was almost nil. You could not get the witnesses, or policemen were on vacations; everybody was hot and tired. Whatever is said about that, both weather and jurors, may apply in the month of September which is a summer month just as much as the month of August.

I think your Honor must give consideration to this. If the case goes on, we are ready. If the case goes off, by all means have the District Attorney put it off until November.

Then there is another matter which I submit with the greatest deference, and I do not have to add that last clause [fol. 75] to your Honor: Your Honor is a candidate and I am very much delighted to know that you are, but you are a candidate for reelection and you should not have anybody suggest that you are presiding in a case with any thought or likelihood of its effect upon you.

Mr. Turkus: Is there any other objection?

Mr. Talley: I am serious. That is a bad situation and I say that if the case goes over at all, it should go over until after Election and we can proceed without any consideration of its effect on the political fortune of the District Attorney.

The Court: Mr. Barshay.

Mr. Barshay: The counsel for defendant Buchalter join in the comments of Judge Talley and adopt his reason for requesting an adjournment as our own. In addition I may briefly relate to your Honor that even before the notice of motion for a blue ribbon jury was served upon counsel for defendants, before they were drawn, Mr. Climenko and I appeared at the office of Judge O'Dwyer. I believe Mr. Turkus was present too. We begged for a later date and we learned that July 14th was supposed to be the date upon which the trial was to commence. We even wanted to waive certain rights which we had, certain technicalities which we subsequently raised, if the trial would be adjourned. Of course it goes without saying our request was refused. There- [fol. 76] after, on a motion for a blue ribbon jury we strenuously opposed July 14th as the date.

Mr. Turkus: And urged September.

Mr. Barshay: There we were accused of seeking delay. That has been said. On a motion for a change of venue, both orally and subsequently under oath we were again accused of using dilatory tactics in seeking delay.

I have had experience as Mr. Turkus has had and we anticipated the difficulty of getting a fair jury in the summer time; we anticipated the difficulty of even getting any kind of a jury in the summer time and we anticipated and we should have anticipated the plans of the prospective jurors

in making their business arrangements for their employees' and their own vacations. All those things were known to the prosecution and we opposed them strenuously at every turn. Now it is apparent to me that an adjournment is wanted by the District Attorney for more reasons than are being said here. However, we will go along, Judge, providing this matter is adjourned subsequent to the Election. It is difficult enough to try a case where the person who sponsors the prosecution is a candidate for District Attorney but when he is a candidate for Mayor—and there may be a time in this case when even the District Attorney may be a witness. You can understand the difficulties under which we shall labor.

[fol. 77] The Court: May be a witness?

Mr. Barshay: Yes, may be a witness. I do not know but there are lots of ways I can think of.

The Court: Fantastic.

Mr. Barshay: It is not fantastic. They may be caused to call him in rebuttal if we raise certain issues which we have in mind. I do not say it is fantastic. It is part of our plan.

The Court: Do you intend to call him?

Mr. Barshay: I did not say that. I say it may be necessary for them to call him in rebuttal.

The Court: Naturally he would take the stand.

Mr. Barshay: I do not say he would not but I do say this, there comes a time when credibility from any person involved may present itself in the trial but Judge O'Dwyer being a candidate for Mayor, we do not want to be faced with that additional burden if he should have to take the stand in this case.

Yesterday it was called to my attention that some of the jurors came to the court with O'Dwyer buttons. That is all right.

The Court: Who told you that?

Mr. Barshay: People. I did not see it myself.

The Court: I have not seen an O'Dwyer button yet.

Mr. Barshay: Judge, the entire county is full of O'Dwyer [fol. 78] buttons, but that is proper, that is all right. Some of us have them concealed in the inside anyway, but you can just understand the difficulties which we shall face in the interest of justice and you should adjourn this case until after Election.

The Court: Counsel for defendant Cohen.

Mr. Turkus: May we have the other lawyers?

The Court: Counsel for Cohen.

Mr. Price: Judge, I am primarily concerned and I intend to renew my application before a jury is sworn for a separate trial on behalf of my client. I therefore take the position that it is immaterial as far as Philip Cohen is concerned when he is tried so long as he can get a separate trial. If the District Attorney wants to try him today, tomorrow, I am ready.

The Court: You do not care?

Mr. Price: I do not care so long as I can get a separate trial for him which I believe he is entitled to.

Mr. Talley: May I call your Honor's attention to this day's issue of the New York American? The name in the headline is the name we expect to be probably the principal witness for the prosecution. His name is in the headline of that paper, and yesterday some of these defendants were named and Saturday the same way.

The Court: Isn't this about the Maione and Abbando [fol. 79] trial?

Mr. Turkus: Whatever that paper is and whatever it says—

The Court: Judge, let me ask you something. Of course you know that when the jury is in custody, which will be from the outset of the trial, that newspapers are not permitted. You know that?

Mr. Talley: I know that but this has been going on for the last, I think, eight or ten days.

The Court: They will remember this after Election just as much as before.

Mr. Talley: I do not think so. They will not be influenced. The District Attorney is a candidate for Mayor of the city which has five boroughs, is a resident and a favorite son as he should be of the Borough of Brooklyn, and these jurors are all citizens of the Borough of Brooklyn.

Mr. Turkus: May I say this to your Honor—

Mr. Talley: There is the complete answer.

Mr. Turkus: Your Honor has heard several counsel for each defendant with the exception of the counsel for Capone. May he be heard?

Mr. Fischbein: With respect to the defendant Louis Capone, of course I join in the remarks that were made by Mr. Barshay and by Judge Talley. I hardly believe, how-

ever, that Judge O'Dwyer or even your Honor would in any way use this trial as a means of bolstering up a campaign [fol. 80] which is being waged at the present time. I am more or less concerned with one thing and that is a fair and impartial trial, with jurors who can really weight the evidence in this case with a view towards doing substantial justice. Because of the heat and because of the weather conditions of this month, especially this month, I hardly believe that these jurors would be in a frame of mind where they could be in a receptive mood to evidence which is of a highly technical nature. I believe that the law on the subject is highly technical and in order for them to be able to follow your Honor in his charge to the jury I believe they should be not only in a good frame of mind but in a good frame of body as well.

The Court: No question about that.

Mr. Fischbein: They will be held in custody unquestionably.

The Court: Counsel, of course, have the hardest work because they have to work after hours every night.

Mr. Fischbein: That is true, Judge, and I believe for the convenience of the jurors as well as the convenience of the Court and the lawyers this case should go over until some time after Election Day.

The Court: There is just a little matter referred to by Judge Talley and that is in relation to this present panel being influenced by these newspapers. I take it that you mean that on account of being on the panel their attention, their interest, will be particularly directed?

[fol. 81] Mr. Talley: It undoubtedly has been directed.

The Court: I submit this for consideration. In the event of the case being continued until after the extremely hot weather and until bearable trial weather, regardless of when it is, that if all counsel for the defense agree, then the Court would be agreeable to drawing of additional talesmen and upon those talesmen coming here the Court will then, the counsel for all defendants agreeing, discharge the present talesmen, but those talesmen will not have to be drawn right away and their attention would not therefore be particularly directed, their interest would not be particularly directed, by being drawn as talesmen, to the stories now being carried in the New York American. You don't have to commit yourselves. That is only food for thought.

Mr. Talley: The same thing would apply to any talesmen

drawn at this time, proximity to the publication of those articles which shall go on, I take it, for another week or ten days and they have been going on for the past week.

The Court: I would not entertain any application for the drawing of additional talesmen as long as these articles are published.

Mr. Talley: They are articles that are likely to be remembered.

The Court: They will be remembered after Election, Judge. They will be remembered a year from now. Those [fol. 82] stories stick like the story of Dick Whittington, Lord Mayor of London.

Mr. Talley: It is the Election influence now.

The Court: You think it grips the panel?

Mr. Talley: More or less, yes.

Mr. Fischbein: Suppose these articles appear up to the day of Election? There is a possibility of that happening, too.

The Court: There is not enough material.

Mr. Fischbein: With Judge O'Dwyer I believe there is a lot of material.

Mr. Turkus: Your Honor, may I continue?

The Court: Yes, Mr. Turkus.

Mr. Turkus: May we have one counsel for each defendant address the Court so that we can have an orderly discussion?

The Court: We have gotten along nicely.

Mr. Barshay: One more point, Judge. If your Honor sets this case down for some time in September, the best selling point for Judge O'Dwyer as a candidate for Mayor will be his successful prosecution of the murder. Every street corner speaker, every radio speaker, every platform speaker, will urge that as the best point in his behalf.

The Court: How will that get to the jury?

Mr. Barshay: The radio especially will be used every single day and night of the week.

The Court: There are no radios permitted in the jury rooms.

[fol. 83] Mr. Barshay: Just a second. I did not say that the radio will be on in the jury room but I do say this, that in the picking of a jury, during the trial your Honor cannot at night, if they are locked up in the Knights of Columbus, or any other place, stop the radio from going on and they

may listen just as well if they have not already before they are locked up.

The Court: There would not be even telephones in their rooms. They would not be permitted to have contact with one another. They will have separate accommodations.

Mr. Barshay: Your Honor, they can go into a restaurant. As they go through the building——

The Court: They cannot. They are not permitted. The rule of segregation is rigidly enforced. There is nothing to which exception can be taken in that respect. They are not even permitted to take a swim without everybody else being ruled out of the pool.

Mr. Barshay: Your Honor, I have seen blue ribbon jurors watching a basketball game.

The Court: It could not be done here because they will be segregated. There would not be an opportunity for conversation unless with members of the panel.

Mr. Barshay: Judge, the fact remains there will be some opportunity before the trial and during the choosing of the jury, at the heat of the campaign. If it will take one week [fol. 84] to choose a jury, why they shall have been filled with all this glorious publicity about the candidate for Mayor, which they have a right to listen to. He will be in court as a spectator or a witness. They shall be and they must be influenced by all that they hear and read.

Mr. Talley: You cannot dissociate this case with this campaign. We all know that Judge O'Dwyer came forward as a candidate for Mayor primarily because it was identification with this type of case.

Mr. Turkus: May I be heard, your Honor? There is not a reasonably minded person in this courtroom who is not aware of this important fact, it would be in the interest of justice where there are 129 jurors out of 226 who are unwilling and recalcitrant——

The Court: Haven't we been over that, Mr. Turkus?

Mr. Turkus: I think the whole thing simmers down to the adjourned date.

The Court: Pardon me. I think you fully covered it. I do not want to have a repetition. Any more counsel for defense?

(No response.)

The Court: Then I would like to cogitate.

Mr. Talley. Will your Honor take that publication and have the stenographer mark it?

The Court: Yes, mark that for identification.

[fol. 85] ("New York Journal-American" of August 5, 1941, marked Defendants' Exhibit A for identification.)

Mr. Talley: I offer it as part of this motion. In support of my motion I offer today's copy of the Journal-American with particular reference to the page which is headed "Bill O'Dwyer—Life Story of the Man Who Smashed Murder, Inc."

Mr. Turkus: Referring to the New York Journal-American of Tuesday, August 5, 1941.

The Court: Personally I am against any delay because I came here to work and am fully prepared to work and I have omitted work that I should have performed during the month of July in anticipation of being tied up here in this case. If there is going to be any adjournment, it is not going to be for a resurrection of the case in hot weather.

Mr. Turkus: That is true and no one else wants it. It would be inimical to the interests of justice to have a balky jury.

The Court: Counsel will be seated.

(His Honor retired from the bench and upon his return stated):

The Court: This jury situation is unprecedented. It is practically a run-out. The reason for it may be reluctance to give protracted service during the hottest month of the year. There is merit in that position. To arbitrarily combat it would smack of coercion and would tend to undermine [fol. 86] that quality of jury service which is essential for a fair trial of this case. Both sides have expressed themselves as being agreeable to putting the case over for that reason. The question becomes apparently one of date. The Court will grant the motion for a continuance of the trial until after Labor Day but it cannot go over until after Election as that would subordinate the trial to the exigencies of a political campaign, which is unthinkable. Any delay of trial in any case involves hazards in relation to witnesses, in relation to evidence. Therefore any delay of any trial must be weighed against those hazards. No prejudice can come from trying the case before Election because, sensibly, no juror will be influenced by his political views in deciding the question of guilt or innocence in a capital case.

The trial is continued until September 15, 1941. By that time the hot weather should be over.

The August term of Part 2 of this court is continued for that and for all other purposes of this trial.

Decision is reserved on all pending applications for excuse from jury service. All members of the jury panel are directed to return on September 15, 1941, in this part, at 10 a. m.

The prisoners are remanded.

This action has no relation to the personal convenience of the Court as the Court will remain in session for the trial of other cases throughout the summer. The jurors [fol. 87] are urged to withdraw their objections and to serve willingly on the date fixed. Should a new panel be desired, counsel for all of the defendants should agree on that. Defendants are remanded.

Mr. Talley: Will your Honor hear me for a moment?

The Court: Not any further argument.

Mr. Talley: No further argument, no, sir. I wish to note my exception on behalf of the defendant Weiss to your Honor's refusal to put the case over until after Election for the reasons urged in our application, and I further wish to correct an erroneous impression, conveyed by your Honor's remarks, that defendants' counsel all consented that this case go over. For myself I did not consent that this case go over except upon condition that it go over after Election. My objection is specifically based upon that statement that if the case was to go over or not to go on today, and we were ready to go on, I have no objection to it going over if it went over until after Election, and that is the condition which I stated to the Court.

The Court: That will make the record clear on that point. I did not accurately understand that your consent was conditional.

Mr. Talley: Yes, sir, correct, and my exception to your Honor's ruling I trust the Court has noted.

The Court: Yes.

[fol. 88] Mr. Wegman: If your Honor pleases, on behalf of the defendant Buchalter we should like the record to show that we take exception to your Honor's granting of the motion for the continuance and we take exception to the adjournment of this trial until the date set by your Honor, and, if your Honor pleases, we should like to have noted upon the record that we did not consent to any

adjournment and that if any adjournment were ordered it is our request to your Honor that the adjournment be set for a day past Election.

The Court: Let me understand, because I have not yet fully memorized the representations by various counsel. Whom do you represent?

Mr. Wegman: I speak for the defendant Buchalter, if your Honor pleases.

The Court: I thought that you all agreed. I think the record speaks for itself. Miss McGowan took it even though it was not audible to the courtroom. All right, you take an exception.

Mr. Fischbein: Your Honor, on behalf of the defendant Louis Capone may I note my exception to your Honor's ruling in regard to the adjourned date, that the defendant Capone did not consent to the case being adjourned except that it be adjourned until after Election Day.

The Court: None of you made that clear, that it was conditional. I thought it was only an argument as to the [fol. 89] date to be fixed. You had all agreed on the desirability of not trying it now. However, the record speaks for itself.

Mr. Price: No comment.

The Court: The defendants are remanded.

(Adjourned until September 15, 1941, at 10 a. m.)

[fol. 90]

Brooklyn, N. Y., Sept. 15, 1941.

Trial Resumed

(Sidney Rosenthal, Esq., appears as associate counsel with Leon Fischbein, Esq., and Emanuel Rosenberg, Esq., for the defendant Louis Capone.)

Mr. Rosenthal: The defendant Capone, if the Court please, has an application to make.

The Court: Is the defendant Buchalter ready?

Mr. Barsbay: Subject to your Honor's hearing the application of Mr. Rosenthal.

The Court: Is the defendant Weiss ready?

Mr. Cuff: Ready.

The Court: Is the defendant Cohen ready?

Mr. Price: Ready, subject to a motion for severance. For the reasons heretofore stated, the defendant Cohen renews his motion for a separate trial.

The Court: Is that motion opposed?

Mr. Turkus: In the interests of justice, the District Attorney consents to the application for a severance with respect to the defendant Philip Cohen, alias "Little Farvel".

Mr. Barshay: I object to the phraseology of the District Attorney. I object to the motion being made in the presence of this jury.

The Court: On what ground?

Mr. Barshay: On the ground of prejudice to the defendant Buchalter.

The Court: That objection is overruled.

Mr. Barshay: Exception.

The Court: Severance granted as to Cohen.

Mr. Turkus: May I at the same time, with respect to the defendant James Ferraco, move for a severance? He is a defendant who has not as yet been apprehended.

The Court: Motion granted.

Mr. Rosenthal: Before making an application, which I do, for an adjournment, I want to supplement a motion which was heretofore made by Mr. Fischbein on behalf of the defendant for a severance, with these additional papers which I have here and which I intend to hand up to the Court, and which I wish to have marked in evidence and deemed part of the motion which I am now renewing for a severance, which your Honor has denied.

The Court: These are all "Mirror" articles?

Mr. Rosenthal: Yes.

The Court: Mark them.

(Received and marked Defendants' Exhibit B for identification.)

The Court: Do you wish to say anything else?

[fol. 92] Mr. Rosenthal: I do not wish to press the argument on that particular motion any further other than to submit the papers to your Honor. Your Honor is familiar with the record made before you.

The Court: Motion denied.

Mr. Rosenthal: The papers which I submit are now marked as part of the record, I take it.

On behalf of the defendant at this time I am going to ask for an adjournment, for two reasons:—one may not be as forceful as the other. The first reason is I have recently been retained to defend and have not had time to thoroughly familiarize myself with the facts and circum-

stances, and to consult with other counsel representing the other defendants. The second is a more important reason: If this trial commences right now there must be three delays in the trial. Tomorrow is Primary Day, and the most religious holidays in the Jewish faith are approaching now, which will necessitate the incarceration of the jury and a delay in the trial on three separate occasions; that will unnecessarily prolong the trial. Now, most of the people engaged in this particular trial are of the Jewish faith, your Honor.

The Court: I am prepared to rule on that now in your favor as far as the Jewish holy days are concerned. Counsel and members of the panel are informed that the Court [fol. 93] will not sit on Jewish holy days and that provisions will be made for attendance at religious services by members of the jury according to their religious convictions. This is to safeguard against racial discrimination in the make-up of the jury.

Mr. Rosenthal: The only fault with that proposition is that men of Jewish faith, if they are called, on these particular holidays they are not supposed to ride or do a number of things.

The Court: The Court, having ruled on that point, will not permit argument on it. Any further argument seeks to embarrass the Judge.

Mr. Rosenthal: I respectfully except to that remark. There is no such intention on counsel's part.

I ask that this case be adjourned over past the Jewish holidays so as to provide for the convenience not only of the jury—

The Court: The motion is denied.

Mr. Rosenthal: Exception.

The Court: This Court always respects Jewish holy days. My family has two Jewish intermarriages in it. My secretary is a Jew. When I practiced law all of my partners were Jewish. I have no discrimination, no prejudice.

Proceed.

[fol. 94] Mr. Rosenthal: That is my motion for an adjournment.

The Court: Motion denied.

Mr. Rosenthal: Exception.

The Court: Are there any other motions?

(No response.)

The Court: The defendant Cohen is remanded.

Mr. Barshay: Your Honor, in view of the series of prejudicial articles which have appeared daily in the New York "Daily Mirror" concerning the defendant Buchalter, I ask your Honor to adjourn this case at least until a reasonable time passes, so that if any of the prospective jurors have read or been influenced, or have been spoken to about the contents of those articles, a reasonable time should pass to have them overcome it. And I think, your Honor, in the interests of justice, should postpone the case for a reasonable time to overcome any effect these articles may have had.

The Court: Do any other counsel wish to be heard?

(No response.)

The Court: This trial was commenced on August 4th. Prior to its commencement a motion was made and denied for a change of venue and transfer to the Supreme Court. On the first morning of the trial preliminary motions were made and ruled upon. The Court then took excuses of jurors and ruled upon some and reserved decision as to [fol. 95] others. The following day, August 5th, because of difficulty in the jury situation due to warm weather and a great multitude of applications for excuses, the trial was, upon motion by the District Attorney—there being no opposition other than as to date—set down to be continued today. The trial is now on.

In the meantime these further publications have appeared, and, as the Court is informed, have been made the subject of another motion in the interim in the Supreme Court for a transfer of the indictment and a change of venue. That motion was denied last week.

Under the circumstances, this Court has no alternative other than to deny the motion, but I will add this: The longer the delay the greater is the publicity hazard. When the human mind registers, it is not likely to readily forget its impression. It will be difficult to select a jury in this case. There is no doubt about that. The Court will allow abundant latitude to all counsel to make searching examination of every member of the panel who is drawn, for the purpose of determining whether such member has any prejudice that will prevent a fair and impartial trial of these defendants. The motion is denied.

Mr. Barshay: Exception.

Will your Honor permit us to mark for identification [fol. 96] these various articles as they appear daily since the denial of the motion?

The Court: Mr. Rosenthal has already put those in.

Mr. Rosenthal: Those are in already.

Mr. Barshay: I am talking about those that shall continue while the trial is in progress. If it is merely a duplication, I am sure your Honor will not mind it.

The Court: I cannot rule on that now because I cannot anticipate what will be done. Application was made to the Court informally by counsel to consider the question of taking action in regard to publications which might embarrass the trial, but upon consulting the law on the subject I think we all are agreed that the law in this state is inadequate to enable dealing with such a situation.

Mr. Barshay: Then you will not foreclose us from renewing our motion?

The Court: You may renew the motion if you wish, if occasion so indicates. Of course, the jurors who are selected will be safeguarded against reading any publications, and all members of the panel will be admonished not to read during the process of selection of the jury.

On application for excuses heretofore made, the Court will call the numbers of certain jury notices. As each number is called, the jurymen having the corresponding notice may step forward.

[fol. 97] (Disposition was then made by the Court of excuses heretofore made.)

The Court: The Court will now entertain applications from those who have not heretofore applied, providing only that the ground of application is something that has come into being since August 4, 1941.

(At 1:00 P. M., all of the requests not having been acted upon, a recess was taken until 2:00 P. M., at which time the panel of jurors was ordered to return.)

(Defendants are remanded.)

[fol. 98] Afternoon Session—Trial Resumed

(From 2:10 P. M. to 4:20 P. M. excuses from the panel were heard.)

(Woolsey W. Conlin takes seat No. 1 in the jury box.)

The Court: Only this juror will be examined this afternoon. I am starting the examination of jurors so as to be absolutely sure that no more applications will be made.

Mr. Turkus: May we limit it to the name and address, your Honor? This has been a very wearisome day.

The Court: For whom?

Mr. Turkus: Not only for the Court but for counsel. We have endeavored to follow this. In addition, there are many jurors who are not in the room who should hear some of the questions. I think it extremely inadvisable to go on at this time.

The Court: We can start in. I don't intend to overwork counsel. I am not pushing you. You can start in. Bring the other jurors in now.

(Woolsey W. Conlin was then examined as to his qualifications to serve as a juror.)

By Mr. Turkus:

Q. Mr. Conlin, do you reside at 711 East 24th Street?

A. I do.

Q. Is that in the Flatbush section of Brooklyn?

A. That is right.

[fol. 99] Q. Are you, sir, familiar with the nature of the charge in this case. Do you understand that this is a charge of murder in the first degree wherein these defendants at the bar, Louis Buchalter, Emanuel Weiss, and Louis Capone are charged with killing Joseph Rosen on the 13th day of September, 1936, in this county by willfully, feloniously, and with malice aforethought shooting and killing Joseph Rosen with revolvers? Do you understand the nature of the charge?

A. I do.

Q. Is there anything about the nature of the charge that would prevent or hinder you from being a fair and impartial juror, fair both to The People of the State of New York and to these defendants on trial?

A. I have read considerable about the case, but I am quite sure that while I could not help but form an opinion on it, I am quite sure that I could dismiss that from my mind if selected as a juror.

Q. In other words then, Mr. Conlin, do I understand you correctly when you say that you have formed some impression from reading articles in various newspapers; is that correct?

A. That is right.

Q. By the same token, that you can banish that impression and decide the case on the merits?

A. Yes, sir.

Q. Have you any scruple, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Are you satisfied, if the evidence convinces you beyond a reasonable doubt that these three defendants, Buchalter, [fol. 100] Weiss, and Capone, are guilty of murder in the first degree, are you satisfied to vote that way knowing what the punishment is?

A. If I am satisfied, yes.

Q. So then you have no reluctance, no scruple, or no principle against capital punishment, do you understand that?

A. I have reluctance that would not——

Mr. Talley: We do not hear you.

A. I say I have reluctance, but that would not prevent me from trying to decide the case on the evidence.

Q. Would that interfere with your judgment of the case on the facts?

A. No, sir.

Q. In other words, if you are satisfied beyond a reasonable doubt that the defendants are guilty, you will vote that way; is that correct?

A. Yes, sir.

Q. On this trestle board you are listed as a C. P. A. I take it that means Certified Public Accountant.

A. That is correct.

Q. Have you been in that line of endeavor for a number of years?

A. I have.

Q. Is your practice of your profession in Manhattan or in Brooklyn?

A. Manhattan, Long Island. We go all over.

Q. May I inquire, sir, are you in business for yourself or with a firm?

A. I am with a firm.

Q. Does your business bring you into any contact, directly or indirectly, with the Brownsville-East New York section of Brooklyn?

A. No.

[fol. 101] Q. None at all? Do you have any connection, directly or indirectly, by way of business with the garment district in Manhattan?

A. No.

Q. Or the clothing district?

A. No.

Q. Does business bring you in contact directly or indirectly with anybody on the Brooklyn waterfront?

A. No.

Q. Or on the Manhattan waterfront?

A. No.

Q. None of the accounts that you are an accountant for have any such business connection to your knowledge; is that correct?

A. That is correct.

Q. Do you know anyone in the clothing trucking business or have you any contact, directly or indirectly, in business with clothing truckers?

A. No.

Q. Have you heretofore served as a juror in any court of record?

A. I have.

Q. Has it been in this county?

A. It has been in this county, but always in civil cases.

Q. You have never had any experience, then, as a juror in a criminal case?

A. That is correct.

Q. In those civil cases where you sat as a juror, did you have the benefit of receiving the Judge's instructions on the law?

A. I did.

Q. The case went to a conclusion?

A. Yes.

Q. Does your business bring you into any contact, directly or indirectly, with any officials of the Amalgamated Clothing Workers of America?

A. No.

Q. Is the name of Jacob Potofsky, secretary or treasurer of the Amalgamated Clothing Workers of America, familiar to you?

A. No.

Q. Is the name Murray Weinstein, manager of the Clothing Cutters Union, Local 4, of the Amalgamated Clothing Workers of America, familiar to you?

A. No.

Q. The name of Sam or Samuel Katz, the business agent of Local 4 of the Clothing Cutters Union of the Amalgamated Clothing Workers of America, is that familiar to you?

A. No.

Q. Is the name of Bruno Belia, an organizer of the home office of that Amalgamated, familiar to you?

A. No.

Q. Is the name of Salvatore Marizano familiar to you?

A. No.

Q. Or the name of Abe Beckerman?

A. No.

The Court: I think that will be enough. We have definitely started so there cannot be any argument about it.

(To Mr. Conlin). Please be in your place at ten o'clock [fol. 103] tomorrow morning. Let nobody talk to you about the case; keep your mind open. Do not talk to anybody about it and, above all, do not listen to the radio and do not read any newspaper about it. Do you understand?

Mr. Conlin: Yes, sir.

The Court: You won't talk to any member of your family?

Mr. Conlin: They will know that I have to come back tomorrow.

The Court: Do not talk about this case.

Mr. Conlin: I won't discuss it.

Mr. Talley: May I renew the application I made, and I make it now, that I might have permission to have the brother of the defendant I represent see him now a few minutes before he leaves the building?

The Court: I will do that in just a moment.

(To talesman). You may go now and be back tomorrow at ten o'clock. Before the defendants are remanded, all other members of the panel are admonished not to read anything in any paper or magazine about this case and not

to discuss it with anybody, not allow anybody to talk about it to them, and not to listen to anything about it over the radio. You may return tomorrow morning at ten o'clock and the names on whom decision was reserved will be announced at that time for definite decision. The jurors may [fol. 104] pass out.

Mr. Talley: Defendant Weiss, I want him to see his brother who has just come up from camp.

The Court: It is purely personal?

Mr. Talley: Yes.

The Court: Who else?

Mr. Talley: There were two of the brothers here at recess. I do not know if they are here now.

The Court: Weiss' brothers may see him under supervision, of course.

Mr. Rosenthal: I had a similar application as to Capone's wife for permission of the Court to see him for a few moments.

The Court: That does not want to get confused with this other.

Mr. Rosenthal: No, I just wanted, before your Honor left the bench—

The Court: If there is no woman in the women's pen, he can be put in the women's pen for the purpose of that interview. The other, Weiss, will be in the men's pen. Where is the U. S. marshal? (To marshal) Weiss is under your jurisdiction. His brother wants to greet him personally, not discuss the case.

The Marshal: He can see him until our wagon comes.

The Court: Whereabouts, in the pen?

[fol. 105] The Marshal: Yes.

The Court: You go up there with him. The defendants are remanded.

(A recess was thereupon taken until Tuesday, September 16, 1941, at 10:00 A. M.)

[fol. 106]

Brooklyn, N. Y., September 16, 1941.

Trial Resumed

The Court: I have a communication from the Department of Justice which counsel may see, and if they desire it may be put on the record (handing counsel a paper).

Defendants' Counsel: May it please your Honor, with respect to the communication, may counsel have an opportunity during the recess to confer with each other about it before they make any request of the Court?

The Court: Have it marked for identification and hand it to the Clerk.

Mr. Climenko: I think a copy of your Honor's communication to which this is a reply should accompany it if it should go on the record at all. If it should go on the record at all I think it should go with your Honor's communication.

Mr. Talley: I join in counsel's request that we be allowed to reserve determination on that question.

The Court: All right, let me know at two o'clock. I think the law requires, this being Primary Day, the court shall recess at three o'clock; that means a short day.

[fol. 107] Mr. Cuff: May I request that a recess be declared at one o'clock on account of Primary Day?

The Court: I will think it over.

(Letter from Department of Justice dated September 6, 1941, addressed to the Honorable Franklin Taylor, marked as Exhibit 1 for identification by the Court.)

(Woolsey W. Conlin, salesman, was then examined as to his qualifications.)

By Mr. Turkus:

Q. I think we got to a place yesterday when you told me you had no contact, directly or indirectly, with anybody in the Brownsville or East New York section of Brooklyn, the Brooklyn waterfront, the clothing and garment districts in Manhattan and the Clothing Truckers; is that correct?

A. Yes.

Q. Did your business at any time in the past bring you in contact with any place, either residing in or having any business in those particular lines, that is, in the clothing and trucking, garment or cloak and suit business?

A. Not as I recall.

Q. Since you received your notice that you were a prospective juror, did anybody speak to you about this case?

A. Well, a friend who had seen my name in the paper had mentioned it.

Q. Has that comment been limited only to the fact that your name was seen in the paper by a mutual friend?

A. Yes sir.

Q. No discussion whatever as to the merits or any connection with anybody at all in the case?

A. That is correct.

Q. I take it you are in sympathy with the enforcement of the Penal Law of the State of New York?

A. Yes, I am, in sympathy with the enforcement of the law.

Q. By such sympathy, such state of mind, you would not permit a guilty man to escape?

Mr. Talley: I object to that as an improper form of examination.

The Court: Objection sustained. He will have to be proved guilty beyond a reasonable doubt.

Q. Is your state of mind such that if you were satisfied beyond a reasonable doubt the defendants were guilty, with the law enforcement always with you, would you permit such a guilty individual to escape?

The Court: That should be further qualified by being limited to his hearing the evidence.

Q. Based upon the evidence in the case and pursuant to the instructions of law given by the trial judge, you have reached a conclusion and you are satisfied beyond a reasonable doubt that the defendants and each of them are guilty of murder in the first degree, as charged, is your state of mind such that by sympathy with law enforcement you mean you would not permit such guilty defendants to escape?

A. I would.

Mr. Talley: Furthermore, that is objectionable, it is not up to the juror to determine whether a man escapes or not. [fol. 109] The province of the jury is to determine beyond a reasonable doubt as to the guilt of a defendant and to bring in a verdict accordingly. I object specifically to the expression of "allowing a guilty man to escape." That is no part of the juror's business at all.

The Court: The word "escape" may be objectionable. I would not use the word "escape." The word "escape" implies flight or may imply flight. The juror can be asked

whether, if a case is proven to his satisfaction beyond a reasonable doubt, he would bring in a verdict of guilty—provided it is so proven against the defendants on trial.

Q. Inquiring particularly as to your state of mind with respect to law enforcement, is it such that if a defendant and each of these defendants on trial are established to be guilty beyond a reasonable doubt upon credible evidence and pursuant to the Judge's charge, you will render your verdict in consonance with guilt?

A. I will.

Q. Did you know the district attorney who went out of office December 31, 1939, or any member of his staff?

A. No.

Q. Do you recall whether or not you knew any member of the staff of that District Attorney?

A. I did not know any as I recall.

Q. The defendant Louis Buchalter, who is seated first of the defendants, the third man to the left, is represented by Hyman Barshay, a former Assistant District Attorney. [fol. 110] Do you know Mr. Barshay or any member of his office staff?

A. I do not.

Q. Another counsel for Louis Buchalter is Mr. Wegman, a former Assistant United States Attorney. Do you know Mr. Wegman?

A. No.

Q. A third lawyer for Louis Buchalter is Mr. Jesse Climenko. Do you know him?

A. No, sir.

Q. The defendant, Emanuel Weiss, who is seated alongside of Buchalter, who has his fingers up to his face, is represented by former Special Sessions Judge Talley. Do you know Judge Talley?

A. No, sir.

Q. Another counsel for Emanuel Weiss is James I. Cuff, at one time an Assistant District Attorney in the County of Kings. Do you know Mr. Cuff?

A. No, sir.

Q. Or Mr. Murray Kriendler, the third lawyer for Weiss, do you know him?

A. No, sir.

Q. I believe he was a former Assistant United States Attorney. The defendant Capone, who is seated in the

rear directly behind Buchalter, is represented by Mr. Sidney Rosenthal; do you know him?

A. No, sir.

Q. The second lawyer for Capone is Mr. Leon Fischbein; he is seated right alongside the officer (indicating). Do you know him?

A. No, sir.

Q. The third lawyer is Emanuel Rosenberg, a partner of Mr. Fischbein. Do you know him?

A. No, sir.

Q. Do you know any member of the bar who practices [fol. 111] criminal law as a specialty?

A. I cannot think of any.

Q. Do you know an attorney named William W. Kleinman?

A. No.

Q. Or his associate, David Price?

A. No.

Q. Do you know a lawyer named Sol Price at one time a former Assistant District Attorney of Manhattan?

A. No, sir.

Q. Will you, as directed by the Court, follow the instructions of the Court with respect to the law, implicitly and without qualification?

A. Yes.

Q. That is, you will take the law entirely from the Judge?

A. Yes.

Q. If you are instructed to give the defendant the benefit of the presumption of innocence, will you follow that instruction?

A. Yes, sir.

Q. If you are told the law of reasonable doubt, that is charged to you by the Judge, you will follow the Judge's instructions as to the law of reasonable doubt?

A. Yes, sir.

Q. Will you give the defendants everything that the Judge says that they should have from the standpoint of the benefits given to them by law?

A. Yes, sir.

Q. Is your state of mind such that you have any bias or prejudice against the prosecution if it avails itself of the use of accomplice testimony?

A. State that again.

Q. Is the word "accomplice" troublesome?

A. No, sir.

Q. Have you any bias or prejudice against the use of accomplice testimony by the State against the defendants [fol. 112] on trial?

A. I have no bias.

Q. Is your state of mind such that by "accomplice" you understand it to be one who committed the crime, who participated with others in the commission of the crime?

A. Yes, sir.

Q. So then—

Mr. Talley: I object to the definition.

The Court: It is a question of law. Objection sustained. The talesman has to sit sidewise. I think he would be more at ease in the witness chair.

(Talesman takes the witness chair.)

By Mr. Turkus:

Q. The District Attorney of this County will call, on the trial of this indictment, an individual who will testify he was a participant with these defendants in the commission of the crime charged. Will you close your mind to the testimony of such an individual solely because he was an accomplice or participant in the crime?

A. I would not close my mind to it, no sir; I would consider it.

Q. In other words, may I assume that you have no inherent bias or prejudice against the prosecution for availing itself of accomplice testimony?

A. No.

Q. Now, with respect to the weight to be given such testimony, namely, the testimony of an accomplice, and the nature of the corroboration required, will you follow the instructions of law as given to you by the Court implicitly?

A. Yes, sir.

[fol. 113] Q. Have you any bias or prejudice against testimony of experts, be they medical, handwriting, or otherwise?

A. I have testified myself as to that.

Q. Do you know District Attorney O'Dwyer or any member of his staff?

A. No, sir.

Q. I take it you do not know the gentleman who is addressing you, Mr. Turkus?

A. That is correct.

Q. Or my associate, Mr. Joseph, or Assistant District Attorney Klein?

A. No, sir.

Q. I do not recall whether we got to the point yesterday where I spoke to you about any possible familiarity with the names of officials who were connected with Local 240 of the Clothing Drivers & Helpers Union.

A. I don't know of any of them.

Q. Is the name of Max Silverman of Local 138 of the Flour Truckmen's Union familiar to you?

A. No, sir.

Q. Is the name of Wolfie Goldis familiar to you?

A. No, sir.

Q. Is the name of Willie or William Alpert, a bondsman, familiar to you in any respect?

A. No, sir.

Q. Is the name of Phillie Buchalter or Phillie Karwar in any wise familiar to you?

A. No, sir.

Q. Is the name of Peter Monat of the Joint Board of Control familiar to you?

A. No, sir.

Q. Or any person named Belianea, or Tosco, are those familiar to you?

A. No, sir.

[fol. 114] Q. Is the name of Mendel Yudelowitz, a man in the kneepants business, familiar to you?

A. No, sir.

Q. If you are selected as a juror, and thus automatically become foreman of the jury, will you be guided solely by the evidence developed during the course of the trial and by the law as his Honor will instruct you on it?

A. I will, but I hope I am not selected.

Q. If you are selected as a juror in the case, will you approach the issue in the case with common sense and understanding?

A. I will.

Q. Will you endeavor—

Mr. Turkus: Comments are out of order; whether they are pleasant or not to the defense is no concern of mine. I ask your Honor to admonish counsel.

Mr. Bashay: There was no comment made at this table.

Mr. Turkus: There was an audible snicker that emanated from Mr. Cuff's lips.

Mr. Cuff: I made comment about the question because I think the question is improper.

Mr. Turkus: Then your province is to get up and say so to the Judge, and not to endeavor to distract the District Attorney by side remarks.

Mr. Cuff: I object to the word "snicker" because I did not make any snicker, and it is not my practice to do so, much as Mr. Turkus may think so.

[fol. 115] The Court: Let us try to get along without friction.

By Mr. Turkus:

Q. If you are selected as a juror, will you endeavor to put forth every conscientious effort to arrive at a true verdict?

A. Yes, sir.

Q. And if selected as a juror, will you listen to fair and reasonable argument by other jurors when the case is deliberated in the jury room?

A. Yes, sir.

Q. And if you are sworn as a juror and accepted in this case, after you have heard all of the testimony completely from the witnesses in the case, and you have had the benefit of the Judge's instructions on the law, and you have deliberated with your fellow jurors, and you are satisfied that these three defendants, Buchalter, Weiss, and Capone are guilty of murder in the first degree, and you are satisfied beyond a reasonable doubt, would you hesitate to say so in your verdict?

A. No, sir.

Mr. Turkus: No challenge for cause.

By Mr. Bashay:

Q. You were asked whether or not you had any knowledge of any men who practice criminal law as a specialty, and you said you did not. Now, have you at any time had any business dealings with any member of Judge O'Dwyer's staff before they became members of his staff?

A. Not as I recollect.

Q. At any time, sir, did you come in contact with Mr. Turkus or Mr. Klein, now in charge of the prosecution, who

[fol. 116] before they became Assistants, were specialists in the practice of criminal law?

A. No, sir.

Q. Did you ever hear of them lecturing before audiences in clubs or societies?

A. No, sir.

Q. Did you ever see some slide lectures given by any Assistant in Judge O'Dwyer's office?

Mr. Turkus: I object. I doubt if there has been any such thing done; in fact, I know it has not.

By the Court:

Q. Do you know anything about it?

A. I have seen slides years ago. I don't know who was the District Attorney at the time.

By Mr. Barshay:

Q. At any rate, did you ever come in contact with any police officers of the Police Department of the City of New York?

A. I have been very well acquainted with a former Police Commissioner.

Q. May I know his name?

A. George McLoughlin.

Q. Did you ever discuss investigation or prosecution of cases with the Commissioner?

A. I have not seen him in recent years.

Q. Do you know anybody else connected with the Police Department in a high or low position?

A. I cannot think of any.

Q. Were you ever a member of any Grand Jury?

A. No.

Q. Were you ever a member of any law enforcement society?

[fol. 117] A. No.

Q. Were you ever a member of any society for the prevention of crime?

A. No.

Q. Did you ever testify for the prosecution in any case?

A. No.

Q. Were you ever the victim of any crime?

A. No.

Q. Was any member of your family at any time the victim of any crime?

A. No.

Q. Have you ever been called by a special panel before?

A. I was called years ago on what was known as a struck jury before Judge Cropsey.

Q. Were you ever called to serve as a Grand Juror?

A. No, sir.

Q. Federal or State?

A. No, sir.

Q. Now, sir, this murder is alleged to have occurred in 1936. Did you read about it then?

A. No, sir, not as I can recall; I probably saw it or something about it, in the paper.

Q. Nothing of that remains in your mind?

A. Not from 1936.

Q. Do you know that the Grand Jury in 1936 investigated this case?

A. No, sir.

Q. Did any member of the Police Department or the Grand Jury Association or the District Attorney's office ever discuss this case with you at that time?

A. No.

Q. Have you retained any recollection of any of the facts that may have appeared in the press at that time?

A. No, sir.

Q. Now, since this indictment in this case, have you read [fol. 118] about the case?

A. Yes, sir.

Q. Particularly in what paper?

A. I think there was an article in the *Journal* and there have been articles in the *Mirror*; I have seen them, I think, in the *Brooklyn Eagle* and in the *Sun*.

Q. Without prying into your personal business, are you a reader of the *Daily Mirror*?

A. No, sir.

Q. Has it come to your attention at times?

A. Yes, sir.

Q. Does any member of your household read the *Daily Mirror*?

A. No, sir.

Q. Did you ever discuss the contents of the articles in the *Daily Mirror*?

A. General articles?

Q. No, with respect to this case and any of the defendants involved in this case.

A. Since I received my notification to come here as a juror, I have made it a point not to discuss the merits of the case with anyone.

Q. But before that, sir, had you read about this case or any of the defendants allegedly involved?

A. I read about it but have no particular interest in it.

Q. Did you say yesterday you formed some opinion with respect to this case?

A. From the articles that I have read I could not help but feel influenced.

Q. I take it your influence is not in favor of the defendants but against them?

A. That is the way the articles read.

Q. I take it that some of them made a real impression [fol. 119] upon you to the detriment of the defendants.

A. They did while I read them.

Q. Now you have been questioned about them, your memory has been refreshed as to the contents of some of these articles, isn't that a fact?

A. I don't recall the details; I recall the general impression I got.

Q. Now, you would require, wouldn't you, the defendants or any of them, to furnish some evidence here to dissipate the impression you formed by reading those articles?

A. I would try not to carry the impression with me.

Q. It would be an effort, wouldn't it?

A. Yes, it would be an effort, but honestly, I think I could put it aside.

Q. Would you require the defendant whom we represent to furnish some evidence with respect to his innocence in this case?

A. Well, I would try to weigh the evidence. I don't know just how to answer that question.

Q. I am trying to find out whether or not you are absolutely able to dissipate from your mind an impression you obtained by reading those articles, whether it is possible for you to do so.

A. I would try to do so.

Q. That is a fair answer; you do not know whether you could succeed?

A. I would try.

Q. And if there came a question of testimony from what you heard on the witness stand, and there was some doubt about it, you could not stop subconsciously from your consideration something you read in the paper?

A. I think I could.

Q. In other words, the defendants start off with some handicap with respect to what you read in the newspaper?

A. I don't think so, no, sir; I would try to be absolutely fair on the evidence.

Q. I think you would make an honest effort, but I am trying to find out whether or not there might creep into your mind at any time any of the things you read which you would use, subconsciously or otherwise, in determining the evidence in this case.

A. I feel I can divorce those from my mind.

Q. Well, the impression you formed, was that one of guilt in this case?

The Court: Do you really want an answer to that before this panel?

Mr. Barshay: All right.

Q. Now, have you read about "Murder, Incorporated," in general?

A. I have not read much about it, no, sir; I have seen it casually in the papers.

Mr. Rosenthal: On behalf of the defendant Capone I object to that question.

Q. Have you been influenced, to the prejudice of the defendant Buchalter, by reading those articles?

A. No, sir.

Q. You know, of course, that the District Attorney of this county is a candidate for public office?

A. Yes, sir.

Q. Are you a member of any committee for his election? [fol. 121] A. No, sir.

Q. Have you contributed to the campaign, or do you intend to contribute to the campaign?

A. I have not been contributing; I have not been approached.

Q. Is it your intention to do so?

A. I do not expect to.

Q. Would that fact influence you in the prosecution of this case?

A. No, sir.

Q. You would not take that into consideration at all?

A. No, sir.

Q. Do you know that every defendant charged with crime is presumed innocent under the law?

A. I do.

Q. Do you know it is a substantial presumption and a substantial right given to every defendant by the law?

A. Yes, sir.

Q. You know the burden of proof in every case is solely and strictly and only upon the prosecution?

A. Yes, sir.

Q. And that it never shifts?

A. Yes, sir.

Mr. Turkus: I object to the form of the question. The juror is being put through a legal test; he is not expected to be a lawyer.

The Court: Yes.

Q. I will reframe the question. If the Court should charge you that the burden is strictly and solely and only on the prosecution and never shifts to the defendant, will you follow that law which the Court shall so charge you?

A. Yes, sir.

Q. Even if you think the law is otherwise, you will follow [fol. 122] the instructions of His Honor?

A. Yes, sir.

Q. On that or on any other subject?

A. Yes, sir.

Q. Do you know that the defendant, if the Court shall charge you, need not prove his innocence; you will take that law?

A. Yes, sir.

Q. If the Court shall charge you that the defendant need not explain a single accusation against him or disprove a single fact against him, you will follow that law too?

A. Yes, sir.

Q. If the Court shall tell you that if the defendant sits silently and makes no answer other than his plea of not guilty, already entered, because of that fact you shall draw no unfavorable inference against him, will you follow that law?

A. Yes, sir.

Q. When the law is, as his Honor shall tell you, that the defendant Buchalter is presumed innocent of this charge against him, as any person in this court-room, will you follow that law?

A. Yes, sir.

Q. Even during your deliberations?

A. I will follow the Judge's instructions to the best of my ability.

Q. To every end?

A. Yes, sir.

Q. The District Attorney has said that he shall offer testimony of people who claim to be accomplices. Will you evaluate with caution and care such testimony?

A. Yes, sir.

Q. You will weigh very carefully what each person in that category says before you shall accept it?

A. Yes, sir.

[fol. 123] Q. If the Court shall charge you on the question of corroboration, you will follow that law, irrespective of any opinion you may have with respect to it?

A. Yes, sir.

Q. So that if there is any testimony of accomplices and there is any other testimony in the case tending to connect the defendant with the commission of the crime, or any of them, you will have the courage to acquit if the Court shall tell you that is the law?

A. Yes, sir.

Q. You will take into consideration the motive of each person; this applies whether he admits he has a motive or not?

A. Yes, sir.

Q. You will take into consideration the hope of reward any witness has for giving the testimony he gives?

A. Repeat that.

Q. You will take into consideration the hope of reward that any witness may have in giving his testimony? Do you understand that?

A. Yes, sir.

Q. The District Attorney has read to you some names which you said you did not know; I may call upon the District Attorney for the purpose only of finding out whether the jury knows any of the witnesses who may be called, to present to the jury a list of those names, and for that pur-

pose only, to see whether or not he knows any of them. I now make a demand on Mr. Turkus through the Court.

Mr. Turkus: The demand has been made through the Court that the District Attorney present to the prospective [fol. 124] juror a list of witnesses; that is the proof of persons whom he intends to establish the guilt of the defendants beyond a reasonable doubt—to a prospective juror?

Mr. Barshay: That is right—to see whether or not he knows them.

The Court: The law does not so require.

Mr. Barshay: May we have the position of the District Attorney? Does he want to give it to the juror?

The Court: The District Attorney is not required to answer, because the law protects him on that. That is the reason why the law was changed. Witnesses for the prosecution are no longer on the back of an indictment.

Mr. Barshay: Perhaps, your Honor, the District Attorney mistakes my position. I do not want to see them. He read a list of names to find out whether or not the prospective juror knew any of them—I guess, on the theory that he might be influenced by their testimony. Now, I would like to have the juror see—I don't want to see them—any of the names of the witnesses he intends to call, for the purpose of knowing whether this juror knows or had any dealings with those witnesses.

The Court: Counselor, you yourself may ask similar questions of this prospective juror, but that does not limit you as to what witness you see fit to put on the stand at any time during the trial. You are not required, as you well [fol. 125] know, to give a list of your witnesses to the District Attorney. That has never been required. Just take your exception and don't argue it.

Mr. Barshay: I take an exception.

By Mr. Barshay:

Q. There are three men on trial. Under the law, as the Court shall tell you, each one is entitled to a separate verdict; you understand that?

A. If you say so. I don't know.

Q. If the Court shall charge you, will you follow it?

A. Yes, sir.

Q. In other words, a conclusion with respect to the defendant need not be the same; you understand that, if the Court so charges you?

A. If the Court so charges.

Q. You have no objection to such law?

A. I have no objection. I would not know.

Q. Will you consider the evidence separately as against each defendant in accordance with his Honor's instructions?

A. Yes, sir.

Q. Unless the Court tells you you can do so, you will not borrow from the evidence of one defendant and use it against the other?

A. That is right.

Q. Have you any prejudice at all in this case against any defendant?

A. No, sir.

Q. Have you any prejudice at all in this case against Mr. Buchalter?

A. No, only I said I read the articles in the paper, which [fol. 126] I said I would try to divorce from my mind.

Q. Those are things you told us you would try to dismiss from your mind if you are chosen as a juror?

A. Yes, sir.

Q. At the present they have not been dismissed, as yet?

A. I have to weigh—If I was a juror and had to weigh the evidence in the case, I would try to shut my mind to all of those things.

Q. In other words, first you will have to see the evidence, weigh it carefully, then you will try to dismiss what you read from your mind, isn't that so?

A. Well, I will put it this way: I will try to dismiss it at the start.

Q. Up to this very second you have not dismissed it from your mind as yet; isn't that so?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

Q. You were here yesterday, you are here this morning, you gave the matter some thought last night, as you knew you were going to be questioned this morning, and up to this second you have not dismissed the things you read prejudicial to the defendant Buchalter from your mind?

Mr. Turkus: I object.

The Court: Objection overruled.

A. I have not dismissed them, but I do not believe I have been required to; I do not think the case is started.

Q. In other words, until you are sworn as a juror, you feel that you are not required to dismiss that prejudice from [fol. 127] your mind, which has formed in your mind before coming here?

A. I have not thought of it in just that way.

Mr. Barshay: I think, your Honor, it is time to move to challenge this juror for cause.

Mr. Talley: I join in the challenge on behalf of the defendant Weiss.

The Court: I will hear counsel for all defendants when they complete their examination before any challenge is tried.

By Mr. Talley:

Q. You told us very frankly yesterday that something you had read about this case had created in your mind an impression about the guilt or innocence of these defendants; is that correct?

A. About the guilt or innocence? I would say a general impression in the various articles of the activities of the defendants as mentioned in the paper. I have no particular case in mind.

Q. But as a result of what you read in the paper, you have formed an impression about this case?

A. Yes.

Q. Now, if you were sworn in as Juror No. 1 in this case, you would still have that impression, would you, at the opening of the case?

A. I would try to dismiss it from my mind.

Q. I did not ask you that; I am not questioning your good faith in the matter at all. The fact is, however, you would, when you became Juror No. 1 in this case, you would [fol. 128] have an impression in your mind about these defendants, wouldn't you?

A. I would dismiss it at that time.

Q. You would dismiss it?

A. I would try to be open-minded.

Q. But you would have the impression?

A. Yes, sir.

Q. Five minutes from now, if you are accepted, as a juror, you would have the same impression you had about this case yesterday morning?

A. That is right.

Q. And it would require something to remove that impression, wouldn't it, it would not just disappear in thin air—it would require something to remove it, wouldn't it?

A. I would remove it through my efforts to decide the case on the testimony and the instructions given in the court-room, and in the court-room only.

Q. But you could not do that until you heard some testimony, could you?

A. I would try to start off with a clean slate.

Q. But the impression in your mind, until you heard the testimony in this case, you could not remove that impression, could you?

A. I would say I would start at the commencement of the trial, and I would try to put that to one side.

Q. But you are not so sure you could unless you heard testimony that would remove it, isn't that a fact?

A. No.

Q. You mean by your answer what?

A. I mean you would not have to prove anything to have me divorce it from my mind.

Q. What would cause its dismissal from your mind unless [fol. 129] there were some testimony offered on behalf of the defendants?

A. I would try to dismiss it in an effort to be fair and honest.

Q. But in order to assist you in being fair and honest and removing that impression, you would have to hear some testimony, wouldn't you?

A. I don't think so, ne, sir.

Q. You think that impression you formed by reading the newspaper account of this case you could remove before you became a juror, without hearing any evidence in the case at all?

A. I would try to disregard it, to put it aside.

Q. Are you quite sure you would succeed in putting it aside without effort—you are a little doubtful about that, aren't you?

A. I can only say I would try to do it.

Q. That is as far as you will go?

A. I cannot do any more than try.

Q. What I mean is, you are not so sure, despite your effort to remove it, you are not so sure you could get it out of your mind?

A. I am quite sure I could.

Q. Then, have you got an impression or haven't you got it?

Mr. Turkus: Objected to as already answered.

The Court: He says he has an impression, but so far he has not said anything about having an opinion.

By Mr. Talley:

Q. Have you any opinion as to the guilt or innocence of these defendants from what you read in the newspaper?

A. I would not put it as strong as that.

[fol. 130] Q. That is the word the Judge suggested that I use. I am following his suggestion. How strong would you put it?

A. I don't know enough about it to have a definite opinion.

Q. Of course you don't, but you did form an opinion from what you read in the newspaper, didn't you?

Mr. Turkus: I object.

The Court: Impression and opinion are two different things. Even though we, as practical men of mature experience, know that we must take everything we read in the newspapers with a grain of salt, nevertheless, for the practical purposes of life we are compelled to be guided by impressions. When it comes to responsibility, that is a different thing. We may or may not say it is an opinion—there has to be an impression. An impression, being tentative and not being definite, of specific purpose, that is why I mentionel that the witness up to the present moment has said nothing about an opinion. He has spoken only of impression.

Mr. Talley: The word used was impression. That is the term that the witness used when he was interrogated.

The Court: His impression may be based upon fragmatic assumption of newspaper accuracy.

Mr. Talley: Whether he makes any presumption as to accuracy or not, the important thing is——

The Court: I said fragmatic.

[fol. 131] Mr. Talley: Even so, he has formed an impression about this case; and what counsel is endeavoring

to find out is whether or not it would require some evidence to remove that impression. It is quite apparent to me it would.

The Court: The Court has expressed no opinion.

By Mr. Talley:

Q. From what you read in the newspaper did you form an opinion about the guilt or innocence of any of these defendants?

A. No.

Q. What did you mean when you said you had formed an impression about this case from your reading about it in the newspaper?

A. I was influenced by the articles, but I would not say I had formed an opinion, because I don't think I know enough about it to form an opinion at this time.

Q. What do you mean when you say you were influenced by what you read?

A. I was impressed.

Q. Impressed by what?

A. By the articles I read.

Q. And as a result of that impression you did form an opinion about the guilt or innocence of these defendants, didn't you?

A. I would not say I formed an opinion.

Q. What did you form an impression of; it must have been of something? Did you understand the question?

A. State it again.

Q. What did you form an impression of?

[fol. 132] A. Well, that is rather difficult. It created an unfavorable impression. It generated an unfavorable impression in the reading of the articles, but I did not try to form an opinion on each part of the evidence that was stated in the paper.

Q. You just regarded it generally?

A. A general impression.

Q. That general impression about these defendants was an unfavorable impression?

A. That is correct.

By Mr. Rosenthal:

Q. You read certain articles; that is correct?

A. Yes, sir.

Q. The purpose of getting a jury, as you understand, is to get men who, in their opinion, consider they can be fair and impartial to both sides. That is clear?

A. Yes, sir.

Q. Those articles, you say, made an impression with you?

A. That is right.

Q. You qualified that statement by saying it does not go as far as an opinion, but it is an impression that was made on you?

A. That is right.

Q. And the impression was very unfavorable to certain of the defendants; is that correct?

A. That is correct.

Q. Now then, the question that raises itself is this: The impression which you formed remains with you right now; is that correct?

A. Nothing has happened to change it.

Q. And you said it would remain with you even until you got in the jury box and were sworn as a jurymen, because you did not see any reason why you should change [fol. 133] that impression until then; isn't that correct?

A. Yes, sir.

Q. Then it is that you would first try to remove from your mind merely because you were accepted as a jurymen, the impression which now is with you as you are sitting as a prospective juror, isn't that correct?

A. Yes, sir.

Q. So that then the position which you would try to assume would be to try to be fair?

A. That is right.

Q. The most you could go in any of the answers that you gave, either to Mr. Barshay or Judge Talley, is that from the time you were actually accepted you would try then to remove the impression which remained with you and has remained with you during the entire time that you have read the articles, and even during the time that you were called as a jurymen, during the time you were called in the box in August, and up to the present minute; that is a correct statement?

A. I will ask you to repeat it.

Q. I will withdraw the question and put it this way: You were called as a prospective jurymen in the box away back in August?

A. That is right.

Q. You were called as a prospective juror in this case how long before that—July, was it?

A. Approximately July.

Q. You knew from the articles you read in the paper that the case involved certain of the defendants that you were being called to sit as a prospective juror on?

A. That is right.

Q. And notwithstanding that fact, in July, when you [fol. 134] received that notice, you had an impression unfavorable to some of the defendants?

A. That is right.

Q. And in August, when you were called as a prospective juror, you still retained that unfavorable impression?

A. That is right, and for that particular reason I have not discussed the case with anybody since.

Q. I am not finding fault with you.

A. I only want to say I realized that and for that reason I have not discussed the case or committed myself in any way.

Q. In other words, any discussion you had after you read the newspaper articles and prior to the time you were called as a juror?

A. Yes, sir.

Q. You did have a discussion prior to that time, which you had a right to have, which helped form an impression you had which was unfavorable to some of the defendants?

A. I don't recall I had any discussion of any case; I may have had, but I was not particularly interested; it was just general news in the paper.

Q. That refraining, as you did, from discussion, that being from the time you were called, you still entertain an unfavorable impression, and you do so retain that impression even as you are sitting here now being questioned by the lawyers?

A. If you put it that way, yes; I heard the charge, but I can dismiss it.

Q. Did you add anything to the answer you gave me?

A. Yes.

[fol. 135] Q. What was the answer you made, that you would try to dismiss it?

A. That is what I make now.

Q. Not before Mr. Turkus told you, did you say you would try to dismiss it; isn't that right?

A. I don't remember the exact word I used, but that is what I had in mind; I don't remember the exact word.

Q. So what you had in mind, after you answered my question, was that although you have divorced the impression right now against these defendants, if you are called and when you are called and after you are sworn, you would try to dismiss that impression?

A. Yes, sir.

Mr. Rosenthal: I join in the challenge.

Mr. Barshay: On behalf of all the defendants, I challenge this juror for cause. In this challenge all counsel join.

Mr. Turkus: May I try the challenge?

The Court: Swear the juror. The Court simply wants to call attention to the fact that in all the questioning by counsel up to the present time the witness has not been asked as to whether he formed an opinion as to the truth and accuracy of the newspaper report which he read.

Mr. Barshay: He was not asked that question in that particular form, but he volunteered the answer, so he obviated the necessity of asking it.

The Court: I am simply calling attention for counsel [fol. 136] to consider ~~an~~ trying the challenge. Try the challenge.

WOOLSEY W. CONLIN, residing at 77 East 24th Street in the Borough of Brooklyn, City and State of New York, being sworn on the challenge, testified:

By Mr. Turkus:

Q. Did I understand your responses correctly to the defense lawyers when you said you had read some newspaper articles, some general newspaper articles, in which the names of the defendants in this case were mentioned?

A. Yes, sir.

Q. And that impression did not reach the stage of being an opinion; is that correct?

A. That is correct.

Q. Am I correct in saying that the tenor of your responses to defense lawyers was that you had no opinion as to the guilt or innocence of the defendants on trial; is that correct?

A. That is correct.

Q. Am I also correct in understanding the tenor of your responses to mean that if selected here as a juror you would endeavor to lay aside impressions and decide this case upon the merits, that is, upon the evidence you hear in the courtroom and the charge given by the Judge on the law?

A. That is correct.

Q. Now, am I further correct in understanding the tenor of your responses to defense lawyers to mean that as soon as you received your notice as a juror you engaged in no specific conversation in connection with the merits of the case?

[fol. 137] A. That is true.

Q. Did you, in reading the articles, pay any particular heed to the accuracy of the events set forth in the articles, and by that I mean did you analyze and look over the articles with any view of determining the truth or falsity of the articles?

Mr. Talley: I object to the form of the question; I don't see how it would be possible for anybody to look over any paper and determine whether the articles were true or false, without knowing what the real facts were.

The Court: Objection overruled.

Mr. Talley: Exception.

By the Court:

Q. Did you form any opinion as to whether the articles were true or false?

A. No, sir.

By Mr. Turkus:

Q. Do you understand that the District Attorney of the State is required by law to establish the guilt of the defendants beyond a reasonable doubt upon testimony adduced in the court-room and not upon any newspaper articles?

A. I do.

Q. If selected as a juror in this case can you lay aside whatever impression you have and decide the case simply upon the evidence adduced in the court-room, in consonance with the Judge's charge on the law?

A. Yes, sir.

By Mr. Rosenthal:

[fol. 138] Q. You have not in any wise changed from the position you took when you answered the question of de-

fense counsel in which you said you would endeavor or try to dismiss from your mind when you were deciding this case, the guilt or innocence of these defendants?

A. I said, if I recall, I thought I could do it, and I still think I can.

Q. Let me interrupt you there. That implies a doubt. Isn't that what you meant when you said you thought you could do it? That you were in doubt as to whether you would be able to do it; isn't that what "thought" means?

A. It probably does, yes.

Q. I am trying to figure your mind. You said you "thought" you could do it. That implies there is a doubt in your mind as to your ability to carry out your "thought."

A. I feel quite certain I could dismiss it.

Q. Now, you say you feel quite certain. That implies a doubt also in your mind, doesn't it, as to your ability to carry out what you honestly would try to carry out? Let me put it this way:—I withdraw the question. Isn't it true that when you read those papers, even though you did not analyze them, you assumed the truth of the statements in order to form an impression?

A. I assume that some of them—I probably assumed that some of it was true.

Q. And in order to form the impression, as you read the paper you assumed¹ what you were reading was true about some of these matters?

A. Yes.

[fol. 139] Q. Now then, is it not a fact that, having read and having assumed the truth of the statements which you read in the paper, and having formed an impression, that even if you were called as a jurymen it would require a greater amount of evidence on the part of these defendants, or a lesser amount of credible evidence on the part of The People than would otherwise be necessary had you not formed an impression as to the guilt or innocence of these men; isn't that true?

A. No.

Q. In other words, although in your answers to my questions you now say that you can only try to dismiss what you read, is that true?

A. I feel—I think I can dismiss that.

Q. Now you say you "think," you use that word, and you say you will try to dismiss it.

A. I say I am quite sure.

Q. That you are "quite sure" and that you "think," all of these expressions of yours imply a doubt in your mind as to your ability to carry out what you would honestly attempt to do in the jury room; isn't that true? They imply a doubt, don't they?

A. Yes, sir.

Q. You were conscious of your answers when you made them in three different ways to me—"quite sure," "try to think," when you made them in answer to my questions you were deliberating in your mind the answers you were giving when you used those three expressions?

A. I am trying to make a fair statement; I am not quibbling.

By the Court:

[fol. 140] Q. Those words are lacking in substance as to your ability to dismiss any impression.

A. Those words are, yes, sir.

Mr. Rosenthal: I urge the challenge, in which all of the defendants join.

By Mr. Turkus:

Q. Are you confident of your ability to lay aside your impression and decide the guilt or innocence of these defendants on the evidence you hear in the court-room and on the Judge's charge of the law?

Mr. Rosenthal: I object.

The Court: It is a legal question and if the answer to the question is "Yes," it would contradict his other answer. The challenge is sustained.

(Edward A. Anderson, residing at 339—73rd Street, in the Borough of Brooklyn, City and State of New York, examined as to his qualifications.)

By Mr. Turkus:

Q. You reside in the Bay Ridge section?

A. Yes, sir.

Q. You have lived in that section for how many years?

A. Since 1908; for a few years I lived in Long Island.

Q. As you sat out there with prospective jurors, did you hear the nature of the charge that these defendants, Buchalter, Weiss, and Capone are charged with, Murder in the First Degree?

A. I did.

Q. Is there anything about the nature of the charge which [fol. 141] would hinder or impair your service as a jurymen?

A. I am more or less opposed to this type of defendants. I am prejudiced against these kind of people.

Mr. Rosenthal: On the statement of the juror I challenge for cause.

The Court: The challenge cannot be tried until the questioning is completed by all sides.

Mr. Rosenthal: We have no further questions.

EDWARD A. ANDERSON, was then sworn on the challenge.

By Mr. Rosenthal:

Q. You have just made a statement——

Mr. Talley: Your Honor takes the position you will not permit counsel to consent to a juror being excused?

The Court: If we do that we will get in trouble.

Mr. Talley: Why?

The Court: That is my experience.

By Mr. Turkus:

Q. Does your business bring you into the Brownsville and East New York section of Brooklyn?

A. No, sir.

Q. Or in the garment district in Manhattan?

A. No, sir.

Q. Does your business bring you in contact with the clothing trucking industry in Manhattan?

A. No, sir, it does not.

Q. Have you any contact, directly or indirectly, with any of those sections or industries I have mentioned?

A. No, sir.

[fol. 142] Q. Are you in sympathy with the enforcement of the Penal Law of the State of New York?

A. I am.

Q. Do you know any of the lawyers in the case who represent these defendants?

A. No, sir.

Q. You heard the names mentioned to the other jurymen?

A. I did.

Q. Do you know Judge O'Dwyer or any member of the District Attorney's staff, specifically, do you know Mr. Turkus, Mr. Klein, or Mr. Joseph?

A. No, sir.

Q. If selected as a juror will you take the law in the case exclusively from Judge Taylor?

A. Yes, sir.

Q. And from nobody else in the case?

A. No, sir.

Q. If selected as a juror will you listen to fair argument and discussion by the other jurors in deliberating?

A. Yes, sir.

Q. If Judge Taylor charges you on the law of reasonable doubt and the presumption of innocence, will you accord all of these points of law in favor of the defendant in consonance with the Judge's charge?

A. Yes, sir.

Q. Since your name appeared on this list did anybody speak to you about the case?

A. No, sir.

Q. There was something you said at the outset; I do not want a repetition of it, but is it something that affects your state of mind with respect to these defendants—yes or no?

A. Yes, sir.

[fol. 143] Q. Is that state of mind of yours reduced to an opinion—is it that strong—in the point of an opinion or an impression?

The Court: On what? You cannot express an opinion here as to what you think of the accused, but you may say whether or not you have an opinion.

The Witness: I was not exactly referring to these defendants when I made that statement. It was general.

By Mr. Turkus:

Q. Is it an opinion or an impression?

A. I said it is a conviction in my mind.

Q. Does it relate to the question of crime or does it relate to the question of guilt or innocence of the accused?

A. No, sir, it is on the crime.

Q. Have you formed any opinion as to whether or not the defendants are guilty or innocent?

A. No, sir.

Q. Of this charge?

A. No, sir.

Q. Have you any scruples, conscientious or otherwise against the soundness of the law that the death penalty must be invoked where a verdict is murder in the first degree?

A. No.

Q. If you are satisfied beyond a reasonable doubt upon all of the evidence in the case, after hearing the law as given by the judge, that these three defendants are guilty of murder in the first degree, would you hesitate to say so in your verdict?

A. No, I would not.

[fol. 144] Q. Have you any bias or prejudice against the prosecution which avails itself of the use of accomplice testimony?

A. What does accomplice testimony mean exactly?

Q. Assuming that The People of The State were to bring here a witness or individual who participated in the commission of the crime with the defendants—that person would be known as an accomplice—without going into any extended legal requirement—have you any inherent bias or prejudice against the prosecution because it uses and avails itself of the use of that type of testimony?

A. I do not believe I can pay much attention to such testimony by such a party.

Q. Do you mean, then, that you would close your mind to the evidence produced in such a case?

A. Yes, sir, I would.

Q. Absolutely close your ears to it?

A. Absolutely.

Q. And disregard it?

A. Yes, sir, I would not be influenced by it.

Mr. Turkus: Now we are in an awkward position; the District Attorney will press the challenge for cause at the same time. Nobody wishes to try this challenge any further.

The Court: Challenge sustained.

(Raymond J. Cunningham, No. 2649, residing at 474 Marlborough Road in the Borough of Brooklyn, City and State of New York, examined as to his qualifications as a talesman.)

[fol. 145] By Mr. Turkus:

Q. Do you reside in the Flatbush section?

A. Yes, sir.

Q. I take it you have heard some of the questions which have been put to the other jurors.

A. I have.

Q. Are you familiar with the nature of the charge in this case?

A. I believe I am.

Q. Is there anything about the nature of the charge, that is, the charge of murder in the first degree, which would impair or prevent you from conducting a fair and impartial trial of the case?

A. No, sir.

Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. I have not.

Q. So, if the evidence in the case, after you have heard the Judge's charge, satisfies you beyond a reasonable doubt that Buchalter, Weiss, and Capone are guilty of murder in the first degree, you would have no hesitation or reluctance in saying so in your verdict; am I correct?

A. Yes, sir.

Q. Does your business bring you into contact with individuals in the Brownsville and East New York section or around the Brooklyn waterfront?

A. No, sir.

Q. Have you any contact, directly or indirectly, with any persons or firms in that area?

A. No, sir.

Q. Have you at any time had any business connections with anyone in the garment or clothing district of Manhattan?

A. No, sir.

[fol. 146] Q. Or with any clothing truckers?

A. No, sir.

Q. Or with the clothing trucking industry?

A. No, sir.

Q. Have you any connection by way of business now, directly or indirectly, or have you had in the past, any connections with any Brooklyn waterfront section?

A. No, sir.

Q. Have you heretofore had service as a juror in criminal cases?

A. I never had.

Q. Would this be your first experience?

A. Yes, sir.

Q. Have you heretofore had service as a juror in a civil case?

A. Never did.

Q. So at no time have you *had the benefit of having the Judge's instructions on the law?*

A. I never had.

Q. If accepted, would you follow the judge's instructions on the law implicitly and without qualification?

A. I would.

Q. Since your name appeared as a prospective juror in this case did anybody speak to you about the case?

A. No, sir.

Q. Are you in sympathy with the enforcement of the penal law of the state?

A. What do you mean by that?

Q. Are you in sympathy with law enforcement?

A. Oh, yes, indeed I am.

Q. Do you know Mr. Barshay, who was an assistant District Attorney for a number of years, ending December 31, 1939?

A. No, sir.

Q. Do you know Mr. Wegman, who was at one time an Assistant United States Attorney?

A. No, sir.

[fol. 147] Q. Or his associate, Mr. Climenko?

A. No, sir.

Q. Do you know anyone in the office or connected with any of the lawyers I have just stated?

A. No, sir.

Q. Do you know former Judge Alfred J. Talley, who represents Weiss?

A. No, sir.

Q. Or Mr. James I. Cuff, who was at one time an Assistant District Attorney in this county?

A. No, sir.

Q. Or Mr. Murray Kreindler, who was at one time an Assistant United States Attorney?

A. No, sir.

Q. Do you know anybody who was connected with their respective offices?

A. No, sir.

Q. Do you know Mr. Sidney Rosenthal?

A. No, sir.

Q. Mr. Rosenthal is the attorney who stands at my left side; do you know him?

A. I have seen him before.

Q. In court?

A. This morning.

Q. Other than this morning you have never seen him before?

A. Never seen him before.

Q. Do you know Mr. Leon Fischbein or Emanuel Rosenberg, partners, and associated with Mr. Rosenthal in the Capone case?

A. No, sir.

Q. Do you know intimately any member of the bar who practices criminal law as a specialty?

A. No, sir.

Q. Do you know whether you have ever come in contact with a man named Kleinman?

A. If I have ever come in contact with him? No.

[fol. 148] Q. Do you know him or his partner, David Price?

A. No, sir.

Q. Or a lawyer named Saul Price, at one time an assistant District Attorney in Manhattan?

A. No, sir.

Q. Is the name Murray Weinstein, manager of the Clothing Cutters Union, Local No. 4, Clothing Makers of America, familiar to you?

A. No, sir.

Q. Is the name of Sam or Sammy Katz, business agent of Local No. 4 of the Clothing Cutters Union, familiar to you?

A. No, sir.

Q. Is the name Barney Bellanca, an organizer attached to the Amalgamated, familiar to you?

A. No, sir.

Q. Is the name Salvatore Marazzano familiar to you?

A. No sir.

Q. Do you know any union official of Local 240 of the Clothing Drivers Helpers Union?

A. No, sir.

Q. Is the name of Philip Orlofsky, one-time manager of the Clothing Cutters Union, Local No. 4 of the Amalgamated, familiar to you?

A. No, sir.

Q. Or the name of Peter Monat, of the Control Committee of the Amalgamated, familiar to you in any way?

A. No, sir.

Q. Or the name of Max Silverman, of the Flour Trucking Union, or Wolfie Goldis?

A. No, sir.

Q. Or the name of Yudelowitz, a man in the knee pants business; is that familiar to you?

A. No, sir.

Q. If accepted as a juror and the Judge instructs you on the doctrine of reasonable doubt and the presumption of [fol. 149] innocence will you follow the Judge's instructions implicitly and give the defendants the benefit of this doctrine of law as to reasonable doubt and the presumption of innocence?

A. Yes, sir.

Q. By the same token, if you are satisfied that The People of the State of New York have established their cause by believable evidence beyond a reasonable doubt, will you say so and reflect that in your verdict?

A. Yes, sir, I will.

Q. Do you find any fault with the District Attorney of this county calling to the stand men who participated in the commission of crime with the defendants, and availing himself of the use of that type of testimony?

Mr. Barshay: I don't believe anybody finds fault with the District Attorney's doing that.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. No, sir, I do not.

Q. Then may I assume you have no bias or prejudice against the District Attorney or against the prosecution which uses testimony of accomplice witnesses?

A. No, sir, I have not.

Q. With respect to any defense that may be invoked, will you take the law specifically from the Judge with regard to that?

A. I will.

Q. For example, if any defendant pleads an alibi, will you take the law specifically from the Judge on that point?

A. I will.

[fol. 150] If selected as the first juror in the case, such selection would automatically make you foreman of the jury, and, if accepted as such, would you endeavor to work conscientiously with the other jurors and endeavor to arrive at a verdict which will do justice in the case?

A. I will.

Q. Will you listen to reasonable argument and discussion of the other jurors?

A. Yes, sir.

Q. Will you use common sense and understanding in weighing the issue in the case?

A. Yes, sir.

Q. Is the name of William Albert, a bondsman, familiar to you in any respect?

A. No, sir.

Q. Or the name of Emanuel Buchalter, Philip Buchalter, or Philip Kowas?

A. No, sir.

Q. If selected, is there any reason why you cannot hear the evidence in the case, listen to the Judge's instructions on the law, and render a verdict in consonance with justice in the case?

A. Not as I know of.

Q. If selected will you try to do justice in this case?

A. I will.

By Mr. Barshay:

Q. May I know with whom you are connected in your profession or business?

A. I am with the Kopper Coke Company.

Q. How long have you been with the Kopper Coke?

A. Nine years.

Q. Frankly, I may say that when I was an Assistant Dis-
[fol. 151] trict Attorney I had some official business with
your company, do you recall that?

A. I would not know that.

Q. You never came in contact with me?

A. No, sir.

Q. Were you at No. 16 Court Street then?

A. Yes, sir.

Q. Are you still at No. 16?

A. Yes, sir.

Q. Do you remember some correspondence with the of-
fice of the District Attorney of Brooklyn at that time?

A. I never knew about that.

Q. You don't know anything about it?

A. No, sir.

Q. Do you know any of the defendants that are named
in this indictment?

A. No, sir, only through the newspaper.

Q. Only by what you read?

A. Yes, sir.

Q. Having read about them in the newspapers, as you
did, does that refresh your recollection at any time you
may have known their family or them?

A. No, sir.

Q. Or had business with them?

A. Never did.

Q. Or if your concern dealt with them in selling coal?

A. Not as I know of.

Q. You have no such knowledge?

A. No, sir.

Q. Have you read about them in the *Daily Mirror*?

A. I do not read the *Daily Mirror*.

Q. Or the *New York Journal*?

A. No, sir.

Q. Or any other publications?

A. I read about them in the *Tribune*.

Q. Often?

A. No, I would not say often.

[fol. 152] Q. Have you read about them before you re-
ceived your notice in this case?

A. I did read some, yes, sir.

Q. You read about them since?

A. No, sir, not since.

Q. Have you formed any impression about them from what you read about them in the newspaper?

A. No, sir, I cannot say I have, truthfully.

Q. You cannot say you have? Is there some doubt in your mind that you may have?

A. No, there is not any doubt.

Q. Do you believe what you read?

A. To tell you the truth, I did not think of it enough to really believe or disbelieve it.

Q. Is that the only publication you read?

A. About the only.

Q. Have you read about it in the *Eagle*?

A. Yes, sir.

Q. Had you read about them before you received your notice?

A. Yes, sir, I did.

Q. And after you received the notice?

A. Yes, sir.

Q. Had you formed any impression by reading the *Eagle* with respect to the defendants?

A. Well, yes, I have formed an impression, yes.

Q. You were going to mention that yourself?

A. Yes, sir.

Q. And the impression or opinion you formed was prejudicial to the defendants?

Mr. Turkus: I object to the form of the question. "Impression" and "opinion" are two different things. The juror said he had an impression.

The Court: It is a double question.

[fol. 153] Mr. Barshay: I will accommodate you.

Mr. Turkus: I object to Mr. Barshay going into it to accommodate anybody.

Q. Have you formed any impression as a result of reading the *Eagle* with respect to this defendant?

A. It is a general impression, yes.

By the Court:

Q. Have you formed that impression as to whether or not the defendants or any of them are guilty?

A. Oh, yes, to some extent.

By Mr. Barshay:

Q. That is your impression, personally?

A. Yes, sir.

Q. And it would necessitate proof to dissipate that impression?

A. That is true.

Q. That is your honest opinion?

A. That is true.

Mr. Barshay: On behalf of the defendant Buchalter, I challenge this juror for cause.

The Court: Try the challenge.

Mr. Talley: On behalf of the defendant Weiss, I join in the challenge.

(RAYMOND J. CUNNINGHAM was then sworn on the challenge.)

By Mr. Barshay:

Q. You are still of that opinion, while you are under oath?

A. What opinion?

[fol. 154] Q. Now that you are under oath, do you repeat now what you said to me a few seconds ago?

A. Do I repeat it? Yes, I do.

Q. That is your opinion now?

A. That is right.

By the Court:

Q. It would require evidence to eradicate it from your mind?

A. I believe it would, yes, sir.

Q. That is, on behalf of the defense?

A. Yes, sir.

The Court: Challenge sustained.

(WILLIAM C. PAPE, No. 2732, residing at No. 955 New York Avenue, Brooklyn, New York, interrogated as to his qualifications.)

By Mr. Turkus:

Q. Is that in the Highland section?

The Court: Near Vandever Park.

Q. Have you lived in that section a number of years?

A. Yes.

The Court:

Q. That is down by the waterworks?

A. Yes, sir.

Q. Have you been in this room while the other questions were being asked of prospective jurors?

A. Yes, sir.

Q. I take it you understand the nature of the charge, that these defendants, Buchalter, Weiss, and Capone, are charged with murder in the first degree?

A. Yes, sir.

Q. Is there anything about the nature of the charge, that is, the charge of murder in the first degree, which would impair or prevent your service as a juror, fair to the People [fol. 155] of the State and to the defendants on trial?

A. No, sir.

Q. Have you any conscientious or other scruples against the requirement of the law that the death penalty must be imposed in the case where the jury finds a defendant guilty of murder in the first degree?

A. No, sir.

By the Court:

Q. How far are you from where New York Avenue is interrupted by the waterworks?

A. About half a mile.

Q. Near what street are you?

A. Near Church Avenue.

The Court: I had a reason for asking that because a witness in another trial lived on the very corner where the waterworks interrupts the street. Go ahead.

By Mr. Turkus:

Q. Have you heretofore had any jury service in civil or criminal cases?

A. Yes, sir.

Q. Was it a civil case?

A. Civil and criminal.

Q. With respect to the criminal case, has that been in recent years?

A. About a year or so ago.

Q. Was it in this county Court that you served as a juror?

A. Yes, sir.

D. Did the case go to a conclusion?

A. Yes, sir.

Q. Did you, accordingly, have the benefit of listening to the Judge's instructions on the law?

A. I did.

Q. And if accepted as a juror in this case will you follow the Judge's law—that is, the law given by the judge [fol. 156] here, Judge Taylor, implicitly and without qualification?

A. I will.

Q. Since your name appeared on this list as a prospective special juror in this case, has anyone spoken to you about the case?

A. No, sir.

Q. Are you in sympathy with the enforcement of the Penal Law of the State of New York?

Mr. Barshay: I object to that as an improper question.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I am.

By the Court:

Q. Was your father in business on Court Street near Joralemon?

A. No, sir.

Q. Years ago?

A. No, sir.

Q. That was William Pape.

A. I don't remember the name.

By Mr. Turkus:

Q. Do you know Mr. Barshay, who was an Assistant District Attorney for a number of years up to December 31, 1939, in this county?

A. No, sir.

Q. Or Mr. Bertram Wegman, who was at one time an Assistant United States Attorney?

A. No, sir.

Q. Or his associate, Mr. Jesse Climenko?

A. No, sir.

Q. They are the attorneys for Buchalter. You know none of them; is that correct?

A. Yes, sir.

[fol. 157] Q. Do you know anyone attached to their office or associated with them in the practice of law?

A. No, sir.

Q. Do you know former judge Alfred Talley?

A. No, sir.

Q. He represents the defendant Weiss.

A. No, sir.

Q. Or Mr. James I. Cuff, who was at one time an Assistant District Attorney in this County?

A. No, sir.

Q. Or Murray Kreindler, a former Assistant United States Attorney?

A. No, sir.

Q. So you know none of the lawyers who represent the defendant Weiss?

A. I do not know them.

Q. Do you know any person associated with them in the practice of law or connected in their law office in any way?

A. No, sir.

Q. I will ask you the same questions with respect to Mr. Sidney Rosenthal, Mr. Leon Fischbein, and Mr. Emanuel Rosenberg, who are the lawyers for the defendant Capone. Do you know any of them or anyone attached to their office?

A. No, sir.

Q. Do you know intimately or personally any member of the bar who practices criminal law as a specialty?

A. I do not.

Q. Do you know Mr. William W. Kleinman?

A. No, sir.

Q. Or David Price, a lawyer?

A. No, sir.

Q. Or Saul Price, at one time an Assistant District Attorney in Manhattan?

A. No, sir.

Q. Do you know Judge O'Dwyer or any member of his staff?

A. No, sir.

[fol. 158] Q. Specifically, do you know Turkus, Klein, or Joseph, who are trying this case?

A. No, sir.

Q. If accepted as a juror in the case and the Judge, as he will, charges you on the doctrine of presumption of

innocence and on the law of reasonable doubt, will you take those laws and doctrines implicitly from the Judge?

A. Yes, sir.

Q. And will you apply them to the benefit of the defendant as the Court instructs they should be applied?

A. Yes, sir.

Q. By the same token, if the evidence in the case overcomes the presumption of innocence and you are satisfied beyond a reasonable doubt on the evidence in the case that Louis Capone, Buchalter, and Weiss are guilty of murder in the first degree, will you say so in your verdict?

A. I will.

Q. Without fear or reluctance?

A. Yes, sir.

Q. Have you heard the discussions we had with several of the prospective jurors with regard to accomplices—is that word familiar to you now?

A. Yes, sir.

Q. Do you find any fault or have you any prejudice against the District Attorney who avails himself of testimony of such an individual against defendants on trial?

A. No, sir.

Q. So you start off without any prejudice or bias against the prosecutor or against the prosecution for the use of that type of testimony; is that correct?

A. Yes, sir.

Q. Did you know the former District Attorney of this county?

A. No, sir.

[fol. 159] Q. Or any member of his staff?

A. No, sir.

Q. Do you know the present District Attorney of this county?

A. No, sir.

Q. Or any member of his staff?

A. No, sir.

Q. Are you acquainted with any official of the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Is the name of Murray Weinstein, manager of the Clothing Cutters Union, Local No. 4, familiar to you?

A. No, sir.

Q. Or Samuel Katz, business agent of that local of Cutters affiliated with the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Is the name of Jacob Potofsky, an official of the Amalgamated Clothing Workers of America, familiar to you?

A. No, sir.

Q. Or the name of Bruno Belia, an organizer attached to the home office of the Amalgamated, familiar to you?

A. No, sir.

Q. Or the name of Salvatore Marazzano?

A. No, sir.

Q. Do you know any official connected with Local 240 of the Clothing Drivers Helpers Union?

A. No, sir.

Q. Or any officials of the Flour Truckmens Union?

A. No, sir.

Q. Or any former officials?

A. No, sir.

Q. Or any of the Amalgamated Clothing Workers of America, of Local 240, or the Clothiers Pressers Helpers, or Flour Truckmens Union?

A. No, sir.

Q. Is the name of William Albert, a bondsman, familiar to you?

A. No, sir.

[fol. 160] Q. I take it that you have never been a party to any suit, civil or otherwise, even as a witness, in any type of litigation?

A. That is right.

Q. Are the names of Emanuel Buchalter or Phil Buchalter familiar to you?

A. No, sir.

Q. Phillie Korvel?

A. No, sir.

Q. Is the name of Bellanca or Tosca familiar to you in any way?

A. No, sir.

Q. In the event that any defendant should invoke the defense of alibi, will you take the law with respect to alibi implicitly from Judge Taylor, if selected?

A. Yes, sir.

Q. If you should become the foreman of the jury by reason of your selection as the first juror, will you endeavor to work and listen with the other jurors, to reasonable arguments and discussions of the case, as it is discussed in the jury room?

A. Yes, sir.

Q. Will you listen to fair argument of the other jurors?

A. Yes, sir.

Q. If selected, will you endeavor to arrive at a just verdict in consonance with justice?

A. Yes, sir.

Q. Will you use common sense and understanding in applying it to the issue in this case?

A. Yes, sir.

By the Court:

Q. What business are you in?

A. I am employed in the Federal Reserve Bank.

[fol. 161] Q. The main office?

A. Yes, sir, the New York office.

By Mr. Turkus:

Q. Is the name of Peter Monat, of the control committee of the Amalgamated, familiar to you?

A. No, sir.

Q. If selected as a juror, after you have heard the evidence in the case and you have heard the argument of counsel for the defense and the inferences drawn by the District Attorney after the conclusion of the testimony, and you have the benefit of the Judge's instructions on the law, and then you are satisfied beyond a reasonable doubt that Buchalter, Capone, and Weiss have committed the crime of murder in the first degree, would you hesitate, would you be fearful or reluctant to say so in your verdict?

A. I would not.

Mr. Turkus: No challenge for cause.

By Mr. Barshay:

Q. If there is a reasonable doubt as to the guilt of any of the defendants, you would not hesitate to say, "Not guilty," would you?

A. No, sir.

Q. You do not owe a special duty to either side in this case?

A. No, sir.

Q. You are a federal employee?

A. I am.

Q. Civil service?

A. Well, it is not directly, but indirectly.

Q. Indirectly you are?

A. Yes, sir.

Q. How long have you held that position?

A. Twenty years.

[fol. 162] Q. Can you tell us what you do there, please?

A. I am in the Auditing Department. I am involved in transactions which involve securities and paper money. We have to check them in and out, and take a record, and be there when the transaction takes place.

Q. Do you know anyone at all named in the indictment?

A. No, sir.

Q. Did you know anyone at all in Judge O'Dwyer's office?

A. I do not.

Q. Did you have any contact, directly or indirectly, with Assistant District Attorney Turkus or Assistant District Attorney Klein, both of whom are specialists in criminal law, before they became Assistants on January 1, 1940?

A. I was working on a criminal case, I think last year—

Mr. Turkus: There is just one point objectionable. I object to the statement by Mr. Barshay that Messrs. Turkus and Klein are specialists in criminal law.

Q. Was Mr. Turkus prosecutor?

A. I think Mr. Klein was the prosecutor, to my best recollection.

Q. Did that make an impression upon you so that you would be favorable to him irrespective of the evidence in this case?

A. No, sir.

Q. Was it a homicide case?

A. Yes, sir.

Q. Did it reach a conclusion?

A. It did.

Q. Was it a blue ribbon jury that you were a member of?

[fol. 163] A. It was not a blue ribbon jury.

Q. It was an ordinary jury?

A. Yes.

Q. Is that your only experience at the criminal bar?

A. I think that was my first experience.

Q. You have not had any since?

A. No, sir.

Q. Did you know the deceased, Rosen, Joseph Rosen?

A. I did not.

Q. Do you know any member of his family?

A. No, sir.

Q. This is alleged to have occurred September, 1936, in the East New York section of Brooklyn. Were you a resident of Brooklyn then?

A. Yes, sir.

Q. Did you read about the case?

A. I do not recall specifically.

Q. Has your memory been refreshed since receiving the notice to serve as a juror in this case, whether you read about it before then?

A. No, sir, I do not think it has been refreshed.

Q. Were you a member of the Grand Jury at any time in this county?

A. No, sir.

Q. Were you ever called on a special jury at any time?

A. No, sir.

Q. Did you ever hear any lecture by any of Judge O'Dwyer's assistants on the subject of crime?

A. No, sir.

Q. Did you ever read any magazines with respect to the same subject?

A. No, sir.

Q. Did you ever hear any of their speeches, if there were [fol. 164] any, on the radio?

A. No, sir.

Q. Have you read the serial in the *New York Journal* with respect to Judge O'Dwyer's life?

A. No, sir.

Q. Have you read the serial now being published in the *New York Daily Mirror*?

A. No, sir.

Q. You never read the *Mirror*?

A. Yes, sir.

Q. Have you read it recently?

A. No, sir.

Q. Have you read anything at all with respect to any of the defendants?

A. Yes, sir.

Q. Was it before or since you received your notice?

A. Before.

Q. Long before you received your notice?

A. I should judge so, yes, sir, to the best of my recollection.

Q. May I know in what publication you read it?

A. It would be in—it would be the *Tribune*.

Q. Any evening paper?

A. I do not read many papers.

Q. Do you read the *Brooklyn Eagle*?

A. Very seldom.

Q. Do you read any evening paper?

A. Not as a rule.

The Court:

Q. Are you married?

A. Yes, sir.

Q. Does the paper come into your home?

A. No, sir.

Q. No evening paper?

A. No, sir.

Q. As a result of what you read, no matter where it was, have you formed any impression with respect to any of the defendants?

A. Not any specific impression.

Q. Have you formed any impression, specific or general, [fol. 165] with respect to any of the defendants?

A. I cannot say.

Q. You do not know?

A. No, sir.

Q. Your mind is not clear on it one way or the other?

A. That is right.

Q. Now, sir, since you have been sitting here and heard the prospective jurors questioned, has it refreshed your recollection as to whether or not you formed, general or specific, an impression concerning the defendants?

A. It has not.

Q. Did you form an impression as to the truth or accuracy of whatever you may have read?

A. I don't think so.

Q. One way or the other, you don't know?

A. I don't know.

Q. Just at present is there any prejudice in your mind as to the defendants, or any of them?

A. No, sir, I have not.

Q. Is your mind free and clear of any bias at the present time?

A. Yes, sir.

Q. There is no doubt about it?

A. Absolutely.

Q. Sitting here, presently, is there an assumption in your mind present now that each of these defendants are innocent?

A. I did not hear you.

Q. Do you assume now as you sit here that each defendant sitting here now is innocent of the crime charged?

A. Absolutely.

Q. You feel that way?

A. I feel that way.

Q. You know the law gives them the presumption of innocence, which is theirs by right and not by privilege?

A. Yes, sir.

[fol. 166] Q. And you must guard them with that right throughout the entire trial if you are chosen as a juror, you know that?

A. Yes, sir.

Q. Do you know that the burden of proof rests solely and only with the prosecution in this case?

A. Yes, sir.

Q. That, too, is in the Penal Law, the Criminal Code, you know that?

A. Yes, sir.

Q. You will compel the prosecution at all stages of this trial to prove each of the defendants guilty beyond a reasonable doubt, won't you?

A. That is right.

Q. And should there be a reasonable doubt arising out of the evidence in this case, to whom would you give it?

A. The defendants.

Q. No doubt about that?

A. No.

Q. And that is irrespective of how many jurors may be against you, if there are jurors against you; isn't that so?

A. Yes, sir.

Q. In other words, you will render individual judgment in this case based upon the evidence as you hear it and determine it?

A. Yes, sir.

Q. In the matter of time, that has nothing to do with your conclusion, isn't that so?

A. Yes, sir.

Q. In other words, you would not yield and compromise and be pleasant to your fellow jurors if you believed there was a reasonable doubt in this case arising out of the evidence, that duty you not only owe to this defendant whom I represent but to every defendant in this case; there is no doubt about that?

A. No, sir.

Q. The definition of reasonable doubt which will be given you, you will follow that as his Honor shall instruct you?

A. Yes, sir.

Q. If the Court shall tell you that the burden of proof never shifts to the defendant and that the defendant need not prove his innocence, you will follow that law implicitly?

A. Yes, sir.

Q. And you will fight for it?

A. Yes, sir.

Q. If the Court shall tell you that neither defendant in this case need prove a single charge against him or explain away a single accusation against him, you will follow that law?

A. Yes, sir.

Q. Should all defendants remain absolutely silent, the Court shall tell you that from that fact no unfavorable inference shall be drawn against defendants. You will follow that law implicitly?

A. I will.

Q. You will guard it jealously?

A. Yes, sir.

Q. And no member shall overpower you on this jury by reason of argument or any other way if you personally believe that to be the law?

Mr. Turkus: You will not listen to reason? Maybe you misunderstood the question. You would not hang a jury? [fol. 168] Mr. Barshay: Maybe you misunderstood the question. May I ask your Honor at this time to instruct

the jury and the balance of the panel that may be here, that I did not intend, nor did I say a word in my question which would warrant Mr. Turkus in saying I am trying to hang a jury.

The Court: Objection sustained.

Mr. Barshay: And I except to it.

Q. If there is a reasonable doubt—

The Court: Questions of law are not for the jury to speculate on, but only for application by the jury. You must take the law from the Court.

The Talesman: Yes, sir.

The Court: The jury does not debate about the law.

Mr. Barshay: That is exactly what I was trying to say to you.

Q. You will follow the law on that point, if his Honor shall give it to you?

A. Yes, sir.

Q. If his Honor shall charge you that if you should find a reasonable doubt arising out of the evidence you must give it to the defendants, will you follow that law?

A. I will.

Q. That is clear to you?

A. Yes, sir.

Q. You know an indictment in and of itself has no probative value; it is not proof?

A. Yes, sir.

Q. It simply starts the trial?

A. Yes, sir.

Q. And when the defendant says, "Not guilty," it raises [fol. 169] an issue to be proven by the District Attorney beyond a reasonable doubt for you to decide?

A. Yes, sir.

Q. Do you think you would have the courage to render a verdict of "Not guilty" if you are convinced beyond a reasonable doubt—if you are not convinced beyond a reasonable doubt?

A. I have courage.

Q. And you will exercise it?

A. I will.

Q. Will you apply the evidence in accordance with his Honor's instructions—each defendant, as it is given from the witness stand, only against the defendant to whom it applies, unless his Honor shall charge you otherwise?

A. I will do that.

Q. And unless his Honor so charges the jury, you will not borrow the testimony against one defendant and charge it against the other.

A. Yes, sir.

Q. While you are trying them together, each one is entitled to a separate and distinct verdict under the law in this case.

Mr. Turkus: I object to that as an ambiguous question.

Q. You will not use the evidence given against one defendant against another defendant in the case if it has no application to the other defendant and his Honor shall so charge you?

A. As the Court rules.

Q. There has been some talk about the testimony of alleged accomplices; you heard that?

A. Yes, sir.

Q. If his Honor shall charge you that the testimony of [fol. 170] an accomplice alone, uncorroborated by any other evidence tending to connect the defendant Buchalter with the commission of this crime, is insufficient as a matter of law, will you follow that law?

A. I will.

Q. Before you accept the testimony of a person who says he is an accomplice, you will find out for yourself, from the evidence, who that person is who is giving that testimony?

A. Yes, sir.

Q. His criminal record, if it comes out?

A. Yes, sir.

Q. You will weigh with caution, won't you, the testimony of the person who says he is an accomplice, if he says on the stand that he himself has been a murderer—you will weigh that man's testimony with caution?

A. Yes, sir.

Q. You will weigh it very carefully?

A. Yes, sir.

Q. Before you accept it?

A. Yes, sir.

Q. You will find out, if you can, from the evidence in this case, what motivates him to give such testimony, what he hopes to gain as a result of giving such testimony?

A. Yes, sir.

Q. You will weigh it very, very carefully before you accept it, there is no doubt about that, is there?

A. No, sir, no doubt.

Q. Even if you come to the point where you do believe the testimony of this alleged accomplice, if there is nothing else in the case tending to connect the defendant Buchalter with the commission of this crime, and his Honor shall say [fol. 171] to you you must acquit, will you do so?

A. Yes, sir.

Q. No doubt about it?

A. No, sir.

Q. Now, do you know any police officials intimately?

A. No, sir.

Q. Did you ever know them?

A. No, sir.

Q. Do you know any police officials who are now connected with the District Attorney's office?

A. No, sir.

Q. Did you ever know of any?

A. No, sir.

Q. Did you ever read about them?

A. I recall some, but I do not know the names: I could not say one way or the other.

Q. If a police officer should take the stand and he is one of high rank, that fact alone will not so impress you as to lead you to the conclusion that he must be telling the truth?

A. Not necessarily.

Q. You will treat all witnesses alike?

A. Yes, sir.

Q. No doubt about that?

A. No doubt.

Q. In accepting those witnesses who admit out of their own mouths their past criminal activities, you will be careful with that?

A. Yes, sir.

Q. Did you ever hear Reles testify?

A. No, sir.

Q. Did you ever read his testimony in any place?

A. No, sir.

Q. Did you ever read about Allie Tannenbaum?

A. No, sir.

Q. Or Snolem Bernstein?

A. No, sir.

Q. You never read about them at all?

A. Not to my recollection.

[fol. 172] Q. If, during the trial, you shall hear some testimony which should refresh your recollection as to having read something about it, you will subordinate what you read and dismiss it from your mind?

A. Yes, sir.

Q. And apply only that which you hear from the witness stand?

A. Yes, sir.

Q. And if, at the conclusion of the case, there is one reason for doubt that arises out of the evidence which you find, you will give it to the defendant Buchalter?

A. Yes, sir.

Q. No doubt about that?

A. No, sir.

Mr. Talley: On behalf of the defendant Weiss I have no questions.

By Mr. Rosenthal:

Q. Did I understand you to answer Mr. Barshay, in respect to your reading of articles concerning some of these defendants, that you are not sure now whether it left an impression or it did not leave an impression?

A. No impression in my mind now. I don't remember much, if anything, about it.

Q. When you were asked the question by Mr. Barshay, you said you did not know whether it left an impression or not.

A. Something like that.

Q. Do you recall whether or not you did or did not answer the question when he propounded or put it to you in the fashion which you recall his asking you, whether you read articles concerning any of these defendants?

[fol. 173] A. I recall the question, but I know I had no impression, no definite impression in this case as far as I know.

Q. But you did not remember whether you had an impression or not? Am I correct in making that statement? That was your answer?

A. I did not have any impression; I did not read about the case.

Q. You did read about the case, didn't you?

A. I could not say any specific case; I very seldom read the papers.

Q. How do you keep busy when you are not working?

A. I don't as a rule read the papers.

Q. Do you go to the clubs or play cards to kill time?

A. I go to church.

Q. You are affiliated with church organizations, your activities are there?

A. Yes, sir.

Q. Are you a member of any law enforcement society, or have you ever been?

A. No, sir.

Mr. Rosenthal: May I, in view of the nature of the case, go into his former service—usually we are not allowed to inquire into a particular case, but in view of the nature of this case I think we should be apprised of what homicide he sat on a year ago. Your Honor understands.

By the Court:

Q. Do you remember the name of the case?

A. No, sir, I do not recall.

Q. Who defended it?

A. Mr. Klein—no, not Mr. Klein.

[fol. 174] Q. Who was the judge?

A. Judge O'Dwyer.

By Mr. Rosenthal:

Q. Was it before Judge O'Dwyer was District Attorney or since he has been District Attorney?

A. Before he was.

Q. It was tried before Judge O'Dwyer, who was then a county judge?

A. Yes, sir.

By Mr. Turkus:

Q. I think you have mistaken Mr. Barshay for Mr. Klein.

A. I think it was the man in the brown suit; is that Brother Klein?

Mr. Hurkus: That is Mr. Rosenberg.

Mr. Rosenthal: No further questions.

By Mr. Turkus:

Q. That case was a murder case some years back?

A. Yes, sir.

Q. Judge O'Dwyer was presiding judge at the time?

A. Yes, sir.

Q. The case went to a conclusion and you heard Judge O'Dwyer's instructions on the law?

A. Yes, sir.

Q. The gentleman with the brown suit whom you indicated is one of the lawyers who represents Capone in this case. His name is Emanuel Rosenberg. Do you remember whether he was a participant in the case as a defense lawyer?

A. Well, the gentleman from the District Attorney's office had the appearance of that gentleman there.

Q. He was never in the District Attorney's office. But at any rate, that will have no effect upon your deliberations [fol. 175] in this case—your experience in that case or with any of the lawyers who are now in the court-room who may or not have been in that case, that will have no effect on your determination of this case?

A. No, sir.

Q. Mr. Barshay spoke to you about accepting with care and caution the testimony of accomplices. Will you take the definition of law given by the Judge as to the credibility to be given to certain evidence of witnesses?

A. Yes, sir.

Q. What I want to make sure of it, have you any inherent bias or prejudice against the prosecutor, Judge O'Dwyer, or against the prosecution which uses that type of testimony against defendants, namely, one who commits the crime with him, and uses him to testify against him, have you any inherent bias or prejudice against the prosecutor for using him, or against the prosecution which employs him?

A. No, sir.

Mr. Turkus: The juror is satisfactory.

Mr. Barshay: All counsel join in peremptorily challenging this juror.

(Talesman excused.)

The Court: We will now take a recess until two o'clock. Members of the panel are instructed, the same as yesterday

[fol. 176] afternoon, to avoid discussing the case and avoid reading anything about it.

Mr. Cuff: Will your Honor kindly adjourn until tomorrow because of the Primary Day?

Mr. Rosenthal: I was going to ask your Honor when you adjourned today to adjourn until Thursday, in view of the fact that no jurymen has been chosen. I have a slight cold, and I would like to avoid any complications. No jurymen has been placed in the box.

The Court: There are nine lawyers for the defense, and this is a season for colds. Would it be agreeable to you if either Mr. Rosenberg or Mr. Fischbein conducted the examination.

Mr. Rosenthal: It would be agreeable to me, but it would not be agreeable to my client. This is one of the most essential parts of the trial, and I do not think it is fair to my client not to be present.

The Court: I do not want to set a precedent, because there may be a lot of colds result.

Mr. Rosenthal: If one develops hereafter, I will stay here.

The Court: I will give you until Thursday to get over your cold. If you do not get over it by Thursday morning at ten o'clock, other counsel will have to continue the questioning. We will recess until Thursday. The talesmen [fol. 177] are excused in the meantime, but before the talesmen go out, the defendants will be remanded.

(Adjourned until Thursday, September 18, 1941, at ten o'clock a. m.)

[fol. 178]

Brooklyn, N. Y., September 18, 1941.

Trial Resumed

The Court: I am sorry to have been delayed, but there were matters regarding this case which had to be taken up in chambers, which could not be taken up in the court-room. The trial will proceed.

(PAUL W. WOLF, of 2 Grace Court, Brooklyn, New York, was then examined as to his qualifications to serve as a juror.)

By Mr. Turkus:

Q. Mr. Wolf, do you reside at Grace Court?

A. Correct.

Q. That is in the Brooklyn Heights, that is the Columbia Heights section of Brooklyn?

A. Yes, sir.

Q. Have you lived in Brooklyn a number of years?

A. Since December, 1935.

Q. In the interrogation of the other prospective jurors in the case, did you hear the nature of the charge?

A. Yes, sir.

Q. Is there anything about the nature of the charge, namely, a charge of murder in the first degree, which would impair or hinder your service as a jurymen in the case?

A. No, sir.

Q. Have you any scruple, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Would you permit the question of punishment to enter into your deliberations in the jury room if you were selected [fol. 179] as a juror?

A. No, sir.

Q. Does your business give you any contact in the Brownsville-East New York section of Brooklyn?

A. No, sir.

Q. Have you had any business or social or any type of contact, directly or indirectly, with any persons or firms in the Brownsville-East New York section of Brooklyn?

A. No, sir.

Q. Do you have any business contacts in the garment district in Manhattan?

A. No, sir.

Q. Or in the clothing district?

A. No, sir.

Q. Did business ever bring you into any contact, directly or indirectly, with any firms or corporations doing business in the garment or clothing districts in Manhattan?

A. No, sir.

Q. Do you have any contacts, by way of business or otherwise, direct or indirect, with people or firms on the Brooklyn waterfront?

A. No, sir.

Q. Have you had any contact, direct or indirect, with anyone in the clothing trucking industry?

A. No, sir.

Q. Do you know or do you have any contact, directly or indirectly, with any official of the Amalgamated Clothing Workers of America?

A. No.

Q. Do you know or do you have any contact, direct or indirect, with any official of Local 240 of the Clothing Drivers & Helpers Union?

A. No.

Q. In the past have you had any business or other connection, direct or indirect, with any official of the Amalgamated or with Local 240 of the Clothing Drivers & Helpers Union?

A. No, sir.

Q. Is the name of Jacob Petrofsky, an official of the American Clothing Workers of America, familiar to you?

A. No.

Q. Is the name of Murray Weinstein, manager of the Clothing Cutters Union, Local 4, of the Amalgamated, at all familiar to you?

A. No, sir.

Q. Or is the name of Sam or Samuel Katz, business agent of Local 4, at all familiar to you?

A. No, sir.

Q. Is the name of Bruao Belia, an organizer attached to the home office of the Amalgamated, at all familiar to you?

A. No, sir.

Q. Is the name of Salvatore Marazzano at all familiar to you, sir?

A. No, sir.

Q. Is the name of Philip Orlofsky, one-time manager of the Clothing Cutters Union, Local 4, of the Amalgamated, at all familiar to you?

A. It is not.

Q. Or the name of Abe or Abraham Beckerman?

A. No.

Q. Or the name of Mendel Yudelowitz?

A. No, sir.

Q. Did business contact or any other contact, directly or indirectly, bring you in contact with any officials of Local 138 of the Flour Truckmens Union?

A. No.

Q. Are you familiar with the name of Max Silverman, a one-time official of the union?

A. No, sir.

Q. Is the name of Wolfie Goldis familiar?

A. No, sir.

[fol. 181] Q. Is the name of one William or Willie Alberts familiar to you?

A. No, sir.

Q. Do you know or have you had any contact, direct or indirect, with a dentist by the name of Emanuel Buchalter?

A. No, sir.

Q. Is the name of Philip Buchalter or Phillie Kowas at all familiar?

A. No.

Q. Are the names of Belanco and Tosca familiar?

A. No, sir.

Q. Have you, Mr. Wolf, had any prior service as a juror in a court of record?

A. Yes.

Q. Has it been in this state?

A. Yes.

Q. Was it in the County Court or Supreme Court?

A. It was a civil case, I think in the Supreme Court, I am not sure.

Q. Did that case go to a conclusion, and by that I mean did the Judge charge the jury on the law?

A. Yes.

Q. Have you had any experience as a juror in a criminal case?

A. No.

Q. Mr. Wolf, since your name appeared as a prospective juror in this case, did anybody speak to you about the case?

A. No. Yes, sure, it was mentioned in my presence.

Q. Was that at your place of employment?

A. It was not discussed; it was mentioned.

Q. By that I take it there was no discussion by anyone with you as to the merits of the case?

A. No.

Q. Are you in sympathy with law enforcement?

A. Yes, sir.

[fol. 182] Q. There are various lawyers in the case, to be exact, nine lawyers for the defense, three representing

each defendant. Mr. Barshay, an Assistant District Attorney up to December, 1939, Mr. Bertram Wegman, a former Assistant United States Attorney, and Mr. Jesse Climenko are counsel for the defendant Buchalter. Do you know any of the three whose names I have mentioned?

A. No, sir.

Q. Do you know anyone who is connected with them in their office?

A. No.

Q. The defendant Emanuel Weiss is represented by former General Sessions Judge Alfred J. Talley, former District Attorney James I. Cuff, and former Assistant United States Attorney Murray Kreindler. Are you familiar — or do you know any of those three lawyers?

A. No, sir.

Q. Do you know anyone associated with them or connected with their office?

A. No, sir.

Q. The defendant Louis Capone is represented by Mr. Sidney Rosenthal, Mr. Leon Fischbein, and Mr. Emanuel Rosenberg. Do you know any of those three lawyers?

A. No, sir.

Q. Or anyone connected with their offices?

A. No, sir.

Q. Is the name of William W. Kleinman or David Price familiar to you?

A. No, sir.

Q. You know neither Kleinman nor Price?

A. I do not.

Q. Do you know a member of the bar by the name of Saul Price, at one time Assistant District Attorney in Manhattan?

[fol. 183] A. I do not.

Q. Do you know any member of the bar who specializes in the trial of criminal cases?

A. No.

Q. If accepted as a juror in this case will you take the law exclusively from the trial judge in the case, Judge Taylor?

A. Yes, sir.

Q. If accepted as a juror and the trial judge charges you, as he will, on the presumption of innocence and the

doctrine of reasonable doubt, will you give the defendant the benefit of those presumptions, and each of the defendants, if you are so instructed by the Court, as you will be?

A. Yes, sir.

Q. Have you any bias or prejudice against the prosecutor of this county, Judge O'Dwyer, or against the prosecution which avails itself of accomplice testimony against these defendants at the bar?

A. No, sir.

Q. With respect to the degree of corroboration or the degree of proof required, will you take the law exclusively from the judge, that is, Judge Taylor? Have I made that clear?

A. Yes, I think so.

Q. With respect to any defenses which may be invoked by any of the several defendants, for example, if one defendant should use the defense of alibi, will you take the law with respect to that defense solely from Judge Taylor, who presides at the trial?

A. Certainly.

Q. If accepted as a juror in this case, you will automatically become the foreman of the jury, and if accepted will you endeavor to listen to reasonable and fair discussion by the other jurors in the case?

A. Yes, sir.

Q. In weighing the issue in the case, the issue being the guilt or innocence of these three at the bar, will you use common sense and understanding in deciding that simple issue?

A. I would try to.

Q. You will listen to fair argument and reasonable discussion in the sanctity of the jury room when the case is being deliberated, will you not?

A. Yes, sir.

Q. If accepted as a juror in the case, will you endeavor to do justice in the case?

A. Yes, I will try.

Q. Mr. Wolf, I neglected to ask whether you know the former prosecutor of the county, Mr. Geoghan, or any member of his staff.

A. No.

Q. If accepted as a juror, Mr. Wolf, and you hear all the evidence in the case and you hear the defense lawyers draw the inferences from the testimony and then you hear

the prosecutor draw his inferences from the testimony, and when you have the benefit of the Judge's instruction on the law and then reasonable discussion with your fellow jurors and you are satisfied beyond a reasonable doubt from the evidence in the case that Buchalter and Weiss and Capone are guilty of murder in the first degree, will you have any fear, hesitation or reluctance in so saying in your verdict?

A. No, sir.

[fol. 185] By Mr. Barshay:

Q. Mr. Wolf, may I know, please, for whom you are a salesman?

A. The bond department of the Harris Trust & Savings Bank of Chicago.

Q. May I know the office address?

A. 14 Wall.

Q. Has it any branches up in the garment center?

A. No, sir.

Q. And to your knowledge do you know any flour merchants who had accounts in your bank?

A. No.

Q. You do not know?

A. I do not.

Q. It is reasonable to assume that the names Mr. Turkus read to you have no accounts in your bank at all?

A. I would not answer for that.

Q. You do not know?

A. I do not know.

Q. Do you know Judge O'Dwyer personally?

A. No.

Q. Do you know him at all?

A. I heard him speak in a private meeting.

Q. Was it on the subject of crime?

A. Yes.

Q. May I know how long ago?

A. About eighteen months, I think.

Q. Eight or nine months ago?

A. I say about eighteen months, I recall it.

Q. Was that before he was a District Attorney?

A. No; after.

Q. Since he was a District Attorney?

A. Yes, sir.

Q. Would you mind telling me where you heard him speak?

A. At a church men's meeting, church dinner for men.

[fol. 186] Q. Was it a long speech, sir?

A. No.

Q. You were impressed by that talk, I take it?

A. Yes.

Q. I take it, too, you were impressed by the man himself?

A. Yes.

Q. Did you reach the conclusion that anything that gentleman sponsors must have merit in it?

A. That would be for me to decide, I think.

Q. I beg pardon?

A. I would not say that anything he sponsored I would agree with, no.

Q. Would the fact that District Attorney O'Dwyer is the gentleman whose name is signed on this indictment, would that create an unfavorable inference against our defendant?

A. I don't think so.

Q. You don't think so?

A. No.

Q. Is there some doubt in your mind, sir, about that?

A. Not with reference to the fact that District Attorney O'Dwyer would be sponsoring the case, no, sir.

Q. As you sit here now, sir, is there any prejudice against any of the defendants?

A. Not against them individually.

Q. I heard you say "not against them individually"?

A. Them.

Q. Is there any prejudice against them collectively?

A. I doubt if I could give them a fair trial, to be honest about it.

Q. That is your honest opinion?

A. That is my honest opinion.

Mr. Barshay: In behalf of all counsel for the defense. [fol. 187] I challenge this juror for cause.

The Court: Try the challenge.

PAUL W. WOLF, of 2 Grace Court, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Barshay:

Q. Now, Mr. Wolf, that you have been sworn, is the answer to the question I have just asked before you were sworn the same as if I ask it again?

A. That is true.

Mr. Barshay: I Press, your Honor, the challenge for cause.

Mr. Rosenthal: Defendant Capone joins in.

Mr. Talley: Defendant Weiss joins in.

The Court: Anything, Mr. Turkus?

By Mr. Turkus:

Q. You have given, sir, an honest expression of opinion, that you doubt you can give the defendants a fair trial?

A. That is true.

The Court: The challenge is sustained.

(ALBERT C. BENDER, of 1661 Hendrickson Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.)

By Mr. Turkus:

Q. Mr. Bender, do you reside at Hendrickson Street?

A. That is right.

[fol. 188] Q. In what section or district of Brooklyn is that?

A. I would say the Flatlands district.

Q. Have you lived in Brooklyn a number of years?

A. Practically my lifetime.

Q. Do you live anywhere near Filmore Avenue and East 52nd Street?

A. Not too far away from it.

Q. Is there anything that may have occurred in that neighborhood that would impair your service as a juror in this case?

A. Not to my knowledge.

By the Court:

Q. Near what street are you?

A. I am at Flatbush Avenue and Quentin Road. Filmore is two blocks over and some odd—I would say about ten blocks away from me.

By Mr. Turkus:

Q. I take it, Mr. Bender, that you are familiar with the nature of the charge.

A. Yes.

Q. Is there anything about the nature of the charge, namely, a case of murder in the first degree, which would impair or prevent you from serving as a juror in the case?

A. I don't think so, not to my knowledge.

Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. No.

Q. Would you permit the question of punishment to enter into your deliberations in the jury room as to the guilt or innocence of these defendants?

A. No.

[fol. 189] Q. On the trestle board, Mr. Bender, you are listed as a clerk, and no further description. By whom are you employed?

A. Metropolitan Life Insurance.

Q. Are you employed in Manhattan?

A. That is right.

Q. Do your duties confine you to the office or do you go about the city?

A. In the office only.

Q. Have you any contact, directly or indirectly, with any person or firm in the so-called Brownsville or East New York district or section of Brooklyn?

A. No.

Q. Have you had any by way of business or any other way at any time with any person or firms in the Brownsville-East New York area?

A. Only as to buying a couple of electrical fixtures, that's all.

Q. Has that been sometime in the past?

A. Within a year and a half somewhere.

Q. It has not been since May, 1940?

A. No, sir.

Q. Have you any contacts, directly or indirectly, with any person or firm in the garment district in Manhattan?

A. No, not to my knowledge.

Q. Can you recall whether you have had any contacts in the past in that district?

A. No.

Q. Have you any connection, directly or indirectly, with any person or firms on the Brooklyn waterfront?

A. No.

Q. Did business or any other situation bring you into [fol. 190] contact with anyone connected with the clothing trucking business?

A. No.

Q. Or the clothing business or clothing district in Manhattan?

A. No.

Q. Since your name appeared or notification was given to you that you were a prospective juror in this case, did anybody speak to you about the case?

A. Well, only in the office.

Q. Was that fellow employees?

A. That is it.

Q. In connection with the time that might be spent?

A. Reporting in and out, they knew what I was attending to, naturally.

Q. No discussion on the merits of the case?

A. No.

Q. Are you in sympathy with law enforcement?

A. Absolutely.

Q. Do you know Judge O'Dwyer or any member of his staff?

A. No.

Q. Specifically, do you know Turkus, Klein, or Joseph, Assistant District Attorneys?

A. No.

Q. The defendants are represented by nine lawyers, Mr. Barshay, Mr. Wegman and Mr. Climenko representing Buchalter. Do you know any of the three?

A. I only know Mr. Barshay through serving in previous cases.

Q. Was that at a time when he was an Assistant District Attorney?

A. That is right.

Q. On Mr. Geoghan's staff?

A. That is right.

Q. Do you know Mr. Geoghan or any other member of the staff?

A. I know Fred Kopf.

[fol. 191] Q. Intimately?

A. We belong to the same club.

Q. Since Judge O'Dwyer came into office have you had any discussions as to cases with Mr. Kopf?

A. I believe not.

By the Court:

Q. You live around where the car barns are on Utica Avenue?

A. Yes, not too far from there. That is Avenue N and 49th Street.

Q. That is on the way to Bergen Beach?

A. That is right.

Q. I take it you belong to the Midwood on Kings Highway?

A. No, I don't, I belong to——

Q. Kings County Lodge.

Mr. Cuff: Judge, we cannot hear what the juror is saying.

Q. Kings Highway Lodge on Bedford Avenue, of which Mr. Kopf was formerly Master.

By Mr. Turkus:

Q. Mr. Bender, that discussion you had with the Judge was not quite audible to the defense counsel, and I confess not quite audible to the District Attorney either.

The Court: He says he belongs to Kings County Masonic Lodge, which meets on Bedford Avenue and has its own temple. Mr. Kopf was formerly Master of that lodge.

The Talesman: I doubt that very much, your Honor. I believe Mr. Kopf was Master of the Midwood Lodge.

The Court: I made a mistake, but he was District Deputy [fol. 192] Grand Master of that Masonic district; is that correct?

The Talesman: I believe that is correct, sir.

By Mr. Turkus:

Q. Have you been a close friend of Mr. Kopf?

A. I would not say so. We belong to the same club, not the lodge, but a club, and I have associated with him in minstrel shows and such stuff.

Q. Would there be any embarrassment in your service on a case as a juror in connection with a murder which happened in 1936 and which is being prosecuted now by Judge O'Dwyer?

A. No.

Q. The defendant Weiss is represented by three lawyers, former Judge Talley, former Assistant District Attorney Cuff, and former Assistant United States Attorney Kriendler. Do you know any of the three?

A. No.

Q. Or anyone connected with their offices?

A. Not to my knowledge.

Q. Defendant Capone is represented by Mr. Sidney Rosenthal, Mr. Fischbein, and Mr. Rosenberg. Do you know any of the three?

A. No.

Q. Or anyone connected or associated with their law offices?

A. Not to my knowledge.

Q. Do you know Mr. William W. Kleinman or David Price, lawyers in Brooklyn?

A. No.

Q. Anyone connected with their office?

A. Not to my knowledge.

[fol. 193] Q. Or Mr. Saul Price, former Assistant District Attorney in Manhattan, now practicing law?

A. No.

Q. Do you know intimately or closely any member of the bar who specializes in the trial of criminal cases?

A. Not except Freddie Kopf, if he is doing that now. I do not know whether he is.

Q. Having seen Mr. Barshay, you have seen him in this County Court, then?

A. That is right.

Q. How long ago, sir, was that?

A. I would not be sure of the time, but I would say it was about three years ago.

Q. Do you recall who the judge was before whom you served?

A. I think it was Judge Brancato.

Q. Was it a capital case? By that I mean was it a murder case?

A. Not murder, no, sir.

Q. Did the case go to a conclusion, that is, did the judge charge the jury and did the jury render a verdict?

A. Yes, the jury rendered an undecided verdict; I mean there was a split. There was not a decided verdict given. The Jury—

Q. Disagreed?

A. —disagreed.

Q. Is that the only service that you had, Mr. Bender?

A. No, I have served at other times, but usually it never got as far as the jury room. It was pleading to a lesser degree.

Q. Routine dispositions of cases?

A. That is right.

Q. At any rate, in this specific case in which Mr. Barshay [fol. 194] was then acting as prosecutor, you had the benefit of listening to Judge Brancato's charge on the law to the jury?

A. Yes.

Q. I take it that you understand that is your state of mind, is it not, that the Judge has the exclusive province in the court-room of telling the law to the jury?

A. Yes.

Q. And will you accept the law in all its aspects from the trial judge in this case?

A. Yes.

Q. When the Court charges on the presumption of reasonable doubt, you will accord that presumption to the benefit of the defendant, will you not?

A. Yes.

Q. And each of the defendants, correct?

A. Yes.

Q. And when the Judge charges on the presumption of innocence, you will permit that presumption to inure to the benefit of each of the defendants as the law says they shall have it, will you not?

A. I will.

Q. Do you find any fault or do you have any bias against the District Attorney of the county or against the prosecution which avails itself of the testimony of co-participants in the crime with the defendants and uses that testimony against the defendants on trial?

A. No.

Q. With respect to the degree of proof of corroboration that is required, will you take the law exclusively from the Court and apply the principles of law as given by the Court?

A. Yes.

Q. You would not, would you, arbitrarily refuse to listen [fol. 195] to one who participated in the commission of

the crime with defendants solely because he was an accomplice, would you?

A. No.

Q. And may I understand, then, that you have no inherent bias or prejudice against the prosecutor of the county or against the prosecution which avails itself of accomplice testimony?

A. No.

Q. Have you any bias or prejudice against the use of expert testimony or against expert testimony, whether it comes from a physician, a fingerprint expert or handwriting expert or any other type of expert?

A. No.

Q. Should defendants invoke any defense, for example, should one or more invoke the defense of alibi, will you take the law exclusively from the trial judge as to the law applicable to such a defense?

A. Yes.

Q. Through your business connections or any other way, did you come in contact with any officials of the Amalgamated Clothing Workers of America?

A. No.

Q. Or with any officials connected with Local 240 of the Clothing Drivers & Helpers Union?

A. No.

Q. Or with any officials of the Clothing Cutters Union?

A. No.

Q. Or of Local 138 of the Flour Truckmens Union?

A. No.

Q. Specifically, is the name of Jacob Petrofsky, an official of the Amalgamated Clothing Workers of America, familiar to you?

[fol. 196] A. No.

Q. Or that of Murray Weinstein, manager of the Clothing Cutters Union, Local 4, of the Amalgamated?

A. No.

Q. Or Sam Katz, the business agent of that local and union?

A. No.

Q. Are you familiar with the name of Bruno Belia, an organizer at the home office of the Amalgamated?

A. No.

Q. Or the name of Salvatore Marrazzano?

A. No.

Q. Is the name of Philip Orlofsky, one-time manager of the Clothing Cutters Union, Local 4, connected with the Amalgamated, familiar to you?

A. No.

Q. The name of Abe or Abraham Beckerman or Mandel Yudelowitz; is that familiar to you?

A. No.

Q. Max Silverman or Wolfie Goldis of the Flour Truckmen's Union, Willie or William Alberts, a bondsman? Is the name of Emanuel Buchalter familiar?

A. No.

Q. Phillie Buchalter or Phillie Kowas?

A. No.

Q. Anybody by the name of Weiss in the automobile business up on Park Slope?

A. No.

Q. The name of Bellanca or Tosca?

A. No.

Q. If accepted as a juror in the case would you endeavor to work in harmony with the other jurors, and by harmony I mean to listen to common sense and reason in the jury room?

A. Yes.

Q. May I ask, was there any rancor in that other case?

A. Pardon?

[fol. 197] Q. Was there any rancor among the jury in that other case?

A. There was, yes. I assume you mean—

By the Court:

Q. Anybody stubborn?

A. Well, who knows who is stubborn? There was about nine by three and maybe the three thought the other nine were stubborn. It is according to whom you are asking the question.

Q. It is always the other fellow?

A. I think so, regardless of the number for and against.

By Mr. Turkus:

Q. Mr. Bender, without unduly prying, you can understand that this case may be a lengthy case. It is important not only to The People of the State of New York, but important to these three defendants, and we are trying to get a

jury that will be fair and impartial, fair to The People of the State of New York and, by the same token, fair to the defendants at the bar. Would you listen to reasonable discussion, and I take it from what you said to the Judge you did listen to reasonable discussion in another case?

A. Yes.

Q. Was that some felony case that you presided in?

A. Yes, burglary and grand larceny hooked up in some way. I do not know the way they charge—

Q. In other words, the indictment had several counts?

A. Yes.

Q. Larceny, burglary. How long was that jury out?

[fol. 198] Mr. Talley: I object to that, if your Honor pleases. I think counsel has gone far enough.

The Court: Sustained.

Mr. Turkus: I did not receive a direct answer to the question as to whether or not there was any bitterness in the jury room.

Mr. Rosenthal: May I object upon the ground of its seeking to inquire on secret deliberations of a jurymen in the jury room?

The Court: He said there was rancor; that is enough.

Mr. Turkus: Not that there be any impression created to the contrary, your Honor. I am merely endeavoring to secure a jury here that will deliberate the case and use reason one with the other.

The Court: You mean you are trying to estimate this gentleman's emotions and his emotional reaction.

Mr. Turkus: That is true.

The Court: Look at him. He gets along with his fellow men; he belongs to fraternal societies.

Q. Mr. Bender, do you know of any reason concerning which I have made no inquiry which would impair or hinder you from serving as a juror in the case, fair to The People of the State of New York and fair to the defendants at the bar?

A. Not to my knowledge.

Q. If you are selected as a juror in the case, will you [fol. 199] endeavor conscientiously to arrive at a fair and impartial verdict in the case, a verdict that will do justice in the case?

A. Yes.

Q. If sworn as a juror will you listen to reasonable discussion with the other jurors in the case?

A. Yes.

Q. Will you, if accepted as a juror, listen to the testimony in the case, the arguments or inferences drawn by defense counsel in their summations to the jury, the inferences drawn by the prosecutor in his summation to the jury, and the law as given by the Court, and then with reason and common sense deliberate with the other jurors in the case, and if you are satisfied then upon all the evidence in the case beyond a reasonable doubt that there are three guilty men at the bar of justice, Buchalter, Weiss, and Capone, would you hesitate, would you be fearful, would you be reluctant to say so in your verdict?

A. No.

By Mr. Barshay:

Q. Mr. Bender, did you ever see me in Mr. Kopf's house?

A. No, I have not.

Q. Did you ever see me at Mr. Kopf's lodge, Masonic lodge?

A. No.

Q. Were you present when both of his sons were inducted into the lodge?

A. No, I was not.

Q. You know Mr. Kopf, you say, quite intimately?

A. Yes.

Q. Did you know any other members of Mr. Kopf's staff [fol. 200] at that time?

A. No.

Q. Other than your seeing me in the court-room, had you known me at all?

A. No.

Q. You never had any business with me, isn't that so?

A. That is right.

Q. Did you hear Mr. Kopf give his lectures accompanied—

A. With photo slides.

Q. And those were concerning the prosecution of crime, were they not?

A. Yes.

Q. Did you see them more than once?

A. Yes, I saw them a couple of times.

Q. Some of the pictures were of men shot?

A. Yes.

Q. Some of the bodies apparently were tortured?

A. That is right.

Q. And accompanying the showing of the slides, you heard Mr. Kopf speak about it?

A. That is right.

Q. And tell me, sir, did you form any impression about the prosecution of crime then favorable to the prosecution?

A. Well I could not say that.

Q. Were you influenced at all by either his speech or the showing of the slides?

A. It was very interesting.

Q. Did they impress you?

A. Yes.

Q. Did they arouse in you a desire or a zeal for the prosecution—

Mr. Turkus: I object to the tenor of the question. Every-
[fol. 201] one has a right to prejudice against crime.

The Court: Finish the question.

Mr. Barshay: I am too, Mr. Turkus.

(Pending question read.)

Q. —or to be somewhat part of the machinery of the prosecution?

A. I was very much interested, and I appreciate what they were doing, yes.

Q. And would that now result to the detriment of any of the defendants here?

A. I don't think so.

Q. I beg pardon?

A. I don't think so.

Q. When you say you don't think so, sir, is there a doubt in your mind?

A. No, not to the extent that it has anything to do with this particular case.

Q. Remembering Mr. Kopf's slides, I know they showed in great detail the operation of the prosecutor's office and the Police Department.

A. That is right.

Q. He sort of gave you a behind-the-scenes attitude, did he not?

A. That is right.

Q. So that you were enriched by that experience far more than those who did not either listen to the lecture or observe the slides, isn't that so?

A. That is true.

Q. And subconsciously, if you were chosen as a juror, would those things that you heard and saw come up, creep into your mind, so that some of the things you saw and heard would give you a greater experience and an advantage over [fol. 202] the other jurors who did not hear or see them?

A. It would be hard for me to answer that question.

Mr. Turkus: I don't think that it can be answered, because——

Mr. Barshay: Mr. Turkus, he said he cannot answer. I will try to reframe it.

Mr. Turkus: I object to the question because it is impossible of answer.

Mr. Barshay: He is the judge of that.

Mr. Turkus: No, he cannot tell what experience other jurors have had, and you have asked him if he had more experience than the other jurors, and I think the question was not susceptible of an answer.

The Court: Will you reframe it?

Mr. Barshay: I will reframe it, sir.

Q. Mr. Bender, do you feel now that you have a greater education in crime and the prosecution of crime because of your experience with Mr. Kopf?

A. Yes.

Q. You might say you are more of an expert than the layman?

A. I would say that I know a little more than the average layman.

Q. And would that knowledge be carried into the jury room?

A. I doubt it.

Q. At any rate, there is a doubt in your mind, isn't that so?

A. I could not be sure.

Q. And if a question arises in the jury room with respect [fol. 203] to procedure in the Police Department or the Dis-

trict Attorney's office, maybe that doubt will resolve itself in favor of the prosecution?

A. It may.

Q. It might, isn't that so?

A. It might.

Mr. Barshay: I challenge the gentleman for cause.

The Court: Try the challenge.

ALBERT C. BENDER, of 1661 Hendrickson Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Barshay:

Q. Mr. Bender, would you answer under oath the same way the questions that I asked you as I asked before you were sworn?

A. I will.

Mr. Barshay: May I press it at this time without any further questions?

Mr. Talley: Counsel join in the challenge.

Mr. Turkus: The question, as I understand it, was: If a question arose with respect to procedure in the District Attorney's office or the Police Department, would that be resolved in favor of the prosecution? Is that correct?

By Mr. Turkus:

Q. Mr. Bender, as I understand the purport of your answers to Mr. Borshay, they were that during the time that Mr. Kopf was chief Assistant District Attorney in Kings County he gave certain lectures on crime, accompanying [fol. 204] which he had some slides; is that correct?

A. That is true.

Q. Other than that you have had no experience with the prosecutor's office or with members of the Police Department in the apprehension of criminals or the prosecution of cases; is that correct?

A. Well, also a member of the club is Henry Bauer. He is a Deputy Inspector, and of course, as club members—this is not the lodge, this is a Masonic club—and of course, at times there are discussions.

Q. In the discussions that you had with Mr. Koph or with the Deputy Inspector, at any time was the murder of Joseph

Rosen discussed; that murder took place on Sunday, September 13, 1936?

A. I don't think so.

Q. Were there any slides that Mr. Kopf had in connection with the Rosen case which you saw?

A. I don't think that either. No, not to my knowledge.

Q. So that whatever slides or whatever material you listened to by way of discussion had absolutely no connection with the murder of Joseph Rosen on September 13, 1938, in a little candy store at 725 Sutter Avenue, Brooklyn; is that correct?

A. No.

Q. So that some of the discussion and some of the slides,—you may be familiar with the procedure adopted by the District Attorney's office and by the Police Department in the apprehension of criminals, and their prosecution; is that correct?

A. That is correct.

Q. Is there anything that you have learned from the [fol. 205] prosecution of cases which would prevent you from giving the defendants on trial a square deal?

A. Not to my knowledge. That would require deliberation. I do not know just what I did gain from them that might become of importance in the development of this case. But, as I sit here now, I do not feel that way.

Q. Is there anything that you have seen of the slides or anything that Mr. Kopf spoke of in his discussion on crime which has impaired your ability to be fair to three defendants who were charged with the crime of murder in the first degree?

A. No.

Q. If the Judge charges you on the law that the defendants and each of them, Buchalter, Weiss, and Capone, are presumed to be innocent, until their guilt is established beyond a reasonable doubt to your satisfaction upon credible evidence, would you follow the instruction of the Court and would you give the defendants the benefit of the presumption of innocence?

A. Yes.

Q. And if the Judge should charge you that throughout the case the burden is upon the District Attorney and the District Attorney accepts the burden of establishing guilt beyond a reasonable doubt, will you follow that instruction?

A. Yes.

Q. The question you were asked was with respect to procedure. Having in mind that the defendants have no burden at all by way of proof, that the burden is entirely upon the prosecutor and, on the contrary, the defendants have a presumption of innocence, would you give the prosecutor any [fol. 206] edge of the case, would you give him any edge because of the slides you have seen or the discussions on crime that you have heard?

A. I don't think so.

Q. And if the Judge tells you the District Attorney must establish guilt beyond a reasonable doubt with respect to the procedure in the District Attorney's office or the Police Department, whatever that may mean or whatever it may tend to mean, would you give the District Attorney or the Police Department any advantage, to the detriment of the defendants?

A. No.

Q. Do you feel, as you sit in the jury box now, that you could take your place in the trial of this case and render justice, justice to The People of the State and justice to the three at the bar?

A. Yes.

By Mr. Barshay:

Q. Mr. Bender, in reply to Mr. Turkus's question with respect to giving the District Attorney an edge in this case, your answer was, "I don't think so"?

A. No, I don't think so.

Q. Was your answer, "I don't think so"?

A. Yes.

Q. That implies some doubt, doesn't it?

A. Well, I can't be sure of that. That is, the certainty of it. I can't be sure whether that would become involved in the case or not.

Mr. Barshay: I press my challenge, your Honor, for cause.

The Court: Let other counsel examine if they wish.

By Mr. Rosenthal:

[fol. 207] Q. Mr. Bender, you made an answer to Mr. Turkus that as the facts in this case develop you might call upon what you have learned from the outside by reason of

these slides and talk in aiding you and in arguing to the jury. Isn't that the import of your answer?

A. It may enter into discussions.

Q. So, in other words, if the facts as they unfold in this case have any similarity to what you have learned through slides and Mr. Kopf's talk, your attitude then may be unfair to the defendants, isn't that true?

A. It might enter into it.

Mr. Rosenthal: I press the challenge.

Mr. Barshay: We all press the challenge, sir.

The Court: Anybody else wish to question?

Mr. Talley: I have no questions to ask.

Mr. Turkus: May I ask one further question?

The Court: No. What the juryman states has no specific application to the alleged crime stated in the indictment. It has relation only to the normal functioning of jury psychology on the subject by acquired general knowledge of the individual, on the subject of collective usages and procedures. This is a normal condition and does not signify prejudice. It is a psychology which is omnipresent in the jury system and legally offers no basis for sustaining the challenge. The word "edge" is ambiguous. I do not know what it means. It does not imply partiality. The challenge is overruled.

[fol. 208] Mr. Barshay: We take an exception, your Honor. May we pursue the questioning a little further along the line—

The Court: Yes. Not along that. You tried that issue.

Mr. Talley: All counsel have an exception to your Honor's ruling, I take it?

The Court: Yes, an exception by any counsel is available to all throughout the trial of this case. This applies likewise to objections.

By Mr. Barshay:

Q. Mr. Bender, about how many slides did you see all together?

A. Well, I do not know how many slides. There were several cases.

Q. You do not recollect the name of any of the those cases, do you?

A. By name, no.

Q. You don't recollect how many cases Mr. Kopf spoke of?

A. No, I don't.

Q. All you do remember is the pictures of the victims of crimes or perpetrators of crimes, detectives, and police?

A. That is right.

Q. It may be, sir, that one of the pictures you saw had some connection with this case, isn't that so?

A. It may have.

Q. And if that should occur during the trial your recollection may be refreshed, isn't that so?

A. It may.

Q. And if your recollection is refreshed it may influence [fol. 209] your mind in this case to the prejudice of these defendants, would it not?

A. It may without my even knowing it.

Q. Isn't that a fact?

A. It may.

Q. Did you ever see a lecture accompanied with slides that I gave at your club?

A. No, I didn't, unless you were there the night Freddy Kopf was there.

Q. Exclusive of Freddy Kopf, did you see my series at that time?

A. I saw some series there. I might have seen that too, but I would not be sure.

Q. You have no independent recollection of that, have you?

A. No.

Q. So that if during the deliberation of the jury or during the course of this trial there is something in this case which in your mind is connected with—they refresh recollection of the lecture or slides you saw then—you might be influenced by that fact and determine the specific issue to the detriment of these defendants; isn't that so?

A. It might be.

Mr. Barshay: May I renew the challenge for cause at this time, sir?

The Court: Are all other counsel through?

Mr. Talley: Yes.

Mr. Cuff: All counsel are.

The Court: This is purely guesswork and speculation. Mr. Kopf was chief assistant under Judge O'Dwyer's

predecessor as District Attorney, served under Mr. Geoghan, [fol. 210] and during that administration nothing relating to this case had cropped up. The challenge is overruled.

Mr. Barshay: We take an exception, your Honor. May we disagree with your Honor's conclusion that nothing cropped up in that administration concerning this case?

By Mr. Barshay:

Q. Now, Mr. Bender, were you ever a member of the Grand Jury?

A. No.

Q. Do you know or do you recall now reading about the Grand Jury investigation conducted in 1936 with respect to this case?

A. Not to my knowledge.

Q. Do you recall reading about it at the time of its occurrence? Do you recall reading about it since its occurrence?

A. The investigation or the case?

Q. The case itself.

The Court: There was no case, Mr. Barshay. The Grand Jury investigation of the alleged murder was secret. It was not in the newspapers as to any of the defendants.

Mr. Barshay: I again beg to differ with the Court and say of my own personal knowledge, sir, that there was lots written about the investigation of this case at that time.

The Court: Nothing in relation to any of the defendants.

Mr. Barshay: I will not answer that, sir.

[fol. 211] By Mr. Barshay:

Q. Now, Mr. Bender, do you read the *Daily Mirror*?

A. No.

Q. Some member of your family read it?

A. No.

Q. Somebody in your office read it?

A. Yes.

Q. Did you ever look at it?

A. Yes.

Q. Since you were called as a juror here did you see the *Daily Mirror* in your office or any other place?

A. Yes.

Q. More particularly, were you attracted to the headlines therein concerning this case?

A. Yes.

Q. About how many times, Mr. Bender?

A. Well, I read one article in the life of one of the defendants.

Q. And did that particular article, sir, influence you to the detriment of these defendants or any of them?

A. I don't think so. I mean it has hurt his character.

Q. It had hurt his character?

A. The article I read had, yes.

Q. So that article did impress you to some extent to the detriment of at least one of the defendants, without mentioning any name?

A. That is right.

Q. And you are of that impression right now?

A. As to character, yes.

Q. Now I will ask you this question: If the Court should charge you that the character and the reputation of any defendant is not at issue here at all unless that defendant chooses to put it in issue, would you follow that law?

[fol. 212] A. I wish you would repeat that question.

Q. If the Court should charge you in this case that the character or reputation of any defendant is not at issue here at all unless he himself chooses to make it an issue by putting evidence of good character or reputation in evidence, will you follow the Court's instructions with respect to that law?

A. Yes.

Q. You will? Keeping that in mind, sir, would you be influenced by the fact that you have already formed some opinion by virtue of what you read in the *Mirror* which is detrimental to any one of the defendants' character?

A. I would try not to.

Q. You still use the word "I will try." There is some doubt in your mind?

A. I could not be sure.

Q. I beg pardon?

A. It may creep into my unconscious mind to the extent that it may influence me regardless.

Q. On that point alone, sir, there may arise something in the case which would creep in detrimental to any of the defendants; isn't that so?

A. It may.

Q. And it may creep in to the extent that it would influence your own decision, isn't that possible?

A. I suppose that follows right along the same lines. It may.

Q. And it would be difficult to dissipate the impression you gained from having read that particular article which you say was detrimental to the character and reputation of one of these defendants?

A. I suppose that may be so.

Q. And it may require evidence on the part of that particular defendant in your mind to dissipate that impression, isn't that so?

A. I will answer that the same way. It may. I do not know.

Mr. Barshay: I renew my challenge for cause, your Honor.

The Court: Swear the witness on the trial of this challenge.

(ALBERT C. BENDER, being duly sworn, testified as follows:)

By Mr. Barshay:

Q. Now, under oath, sir, would you answer the questions the same way if I asked them in the same way, as you did before you were under oath?

A. I would.

Mr. Barshay: We renew our challenge for cause, sir, on behalf of all counsel.

The Court: Any questions by the other counsel?

Mr. Talley: No, sir.

The Court: Sustained.

(JOSEPH A. COLE, of 292 Covert Street, Brooklyn, New York, was then examined as to his qualifications.)

By Mr. Turkus:

Q. Mr. Cole, what section of Brooklyn is Covert Street?

A. It is called the Bushwick section.

Q. Have you lived in the Bushwick section of Brooklyn a [fol. 214] number of years?

A. Yes.

Q. Is your home in close proximity to Jefferson Avenue or Jefferson Street?

A. Yes, Jefferson Avenue, I think it is.

Q. Would that be between Evergreen Avenue and some other street?

A. It runs a different way.

Q. Did anything occur on Jefferson Street while you were a resident which might impair your service as a juror in this case?

A. Not that I remember.

Q. Mr. Cole, I take it that you understand now the nature of the charge in the case?

A. Yes.

Q. Is there anything about the nature of the charge, namely, a charge of murder in the first degree, which would impair or prevent your service as a juror in the case?

A. No.

Q. Would you permit punishment to enter into your deliberations of guilt or innocence?

A. I did not get that.

Q. Would you permit the question of punishment to be argued in the jury room when you are deciding the question of guilt or innocence?

A. Yes.

Q. You would permit punishment to be argued?

The Court: That is a question of law. He may think that he should.

Mr. Turkus: That is true. I did not look at it in that light. I will withdraw it in that form.

Q. What I am specifically trying to ascertain is this: Have you any conscientious or other scruple against capital [fol. 215] punishment?

A. No.

Q. In deciding the issue of guilt or innocence, you will not permit anybody to talk punishment in the jury room, will you?

A. No.

Q. Have you heretofore served as a juror in a criminal case?

A. No.

Q. Have you served as a juror in a civil case?

A. No.

Q. At any rate, I think that you understand by now, do you not, that the Judge, the trial Judge, is the ex-usive one on the law?

A. Yes.

Q. That the jury takes the law from the trial Judge without question or qualification?

A. I do.

Q. If selected as a juror in this case will you do that? Will you follow the law as given by Judge Taylor?

A. Yes.

By the Court:

Q. 272 is near what street?

Mr. Turkus: 292.

A. Is between Knickerbocker and Irving.

Q. Knickerbocker and Irving is about over a half a mile from Evergreen and Jefferson?

A. There is a Jefferson Avenue and a Jefferson Street.

Q. I am talking about Jefferson Avenue.

A. I always get confused between the two.

Q. Jefferson Avenue parallels Fulton Street.

A. And Jefferson Street does, too.

[fol. 216] Q. Yes, but that is a long distance away.

A. It is Jefferson Avenue I live near.

Q. How far away are you from Jefferson Avenue?

A. I would say perhaps a mile and a half.

Q. You are up near Evergreen Cemetery?

A. Yes.

Q. Just off the edge of the cemetery?

A. Yes, that is right.

Q. That is the district of two-story-and-basement homes?

A. Primarily.

By Mr. Turkus:

Q. Mr. Cole, on the trestle board you are listed as a book-keeper.

A. That is right.

Q. Is that the correct listing?

A. Yes.

Q. By whom are you employed?

A. By attorneys, Appleton, Rice & Perrin.

Q. And their offices are in Manhattan?

A. Yes.

Q. Are you in a specific branch of the work, that is, do you work on books exclusively?

A. And trust accounts, yes, of that type now.

Q. That is books and trust accounts handled by this firm of lawyers?

A. That is right.

Q. Clients of theirs, I assume?

A. Yes.

Q. In the nature of banks would they be?

A. Yes, they are banks.

Q. These lawyers do not specialize in the trial of criminal [fol. 217] cases?

A. No.

Q. Do you know whether or not there is any criminal case pending in the office?

A. There is not as far as I know.

Q. Their work is exclusively trust work and corporation work?

A. Yes.

Q. This may be repetitious but it is imperative that we go through these various questions. Have you any contact, directly or indirectly, with any person or firm in the Brownsville-East New York section of Brooklyn?

A. Yes.

Q. An individual?

A. Individual and some employees of a particular place.

By the Court:

Q. You represent labor unions?

A. No, not any connection with labor unions.

By Mr. Turkus:

Q. You say you have Brownsville-East New York contacts?

A. Yes.

Q. Have you had them for the last few years?

A. Yes.

Q. Are they with firms or individuals in the Brownsville-East New York area?

A. With individuals.

Q. Is it a business connection?

A. Partly, yes. I have done some income tax returns for some of the employees there.

Q. Is it partly social?

A. Yes.

Q. Income tax returns for employees of a firm?

[fol. 218] A. That is right.

Q. What firm is that?

A. Salzer & Weinsier.

Q. What type of business is that concern engaged, do you know?

A. Plumbing supplies.

Q. And is their work in that Brownsville-East New York area of Brooklyn?

A. Yes.

Q. During your contact, both social and by way of business, have you engaged in discussion from time to time with reference to certain investigations pending in this county?

A. I have a very hazy recollection of talking it over with my brother some time ago, but nothing very clear in my mind.

Q. You say you have been in and out of that Brownsville-East New York area for the last few years?

A. Yes.

Q. That is having some social and business contacts, the nature of which you described to us. Did any time anyone discuss any pending investigations in this county?

A. No.

Q. While you were in that area?

A. No.

Q. Do these people work in this Brownsville-East New York section of Brooklyn or do they reside there?

A. Work there. One or two may live there too, as far as I know.

Q. But you are definite, now, that there has been no discussion of any pending investigation with any of those contacts that you have enumerated?

A. Yes.

Q. As the result of your contact with people in that area, have you read the newspapers in regard to any pending [fol. 219] investigation?

A. Yes, I have.

Q. Have you read them at length?

A. To some extent, yes.

Q. You followed the articles with great interest?

A. Yes.

Q. Do you have any business or other connection in the garment district of Manhattan?

A. No.

Q. Anybody in the clothing district of Manhattan?

A. No.

Q. Or the clothing trucking business or industry?

A. No.

Q. The Brooklyn waterfront?

A. No.

By the Court:

Q. Do you mind giving the general character of the legal practice your firm has?

A. Yes.

Q. In the way of clientele.

A. Preparation of wills, preparation of trust accounts, probating of wills.

Q. What particular line of business?

A. Civil practice.

Q. Do a big corporation business, don't they?

A. Yes.

Q. Madison Avenue?

A. No, we are down on Wall Street.

Q. Any of the big industrial companies?

A. No, sir.

Q. Any of the big transportation companies?

A. No.

Q. What particular bank or trust company?

A. Must I answer that?

Q. There is no secret about it.

A. Bank of Manhattan is one of the clients.

Q. That keeps you pretty busy?

A. Yes.

Q. On trust accounts?

A. Yes.

By Mr. Turkus:

[fol. 220] Q. Since you received notification that you were a prospective juror in the case, did anybody speak to you about the case?

A. No.

Q. Any of the persons that you met in that Brownsville-East New York area either socially or on business, did they have any discussion with you about the case?

A. No.

Q. Are you in sympathy with law enforcement?

A. Yes.

Q. There are nine lawyers here defending these three at the bar: Mr. Barshay, a former Assistant District Attorney—you have heard him interrogate other jurors?

A. Yes.

Q. Do you know him?

A. No.

Q. Mr. Bertram Wegman, a former Assistant United States Attorney. He has not as yet interrogated any jurors, but he is seated—he was seated over here. Do you know whether his name is familiar to you?

A. No, it is not.

Q. Or Mr. Jesse Climenko?

A. No.

Q. Associate of Mr. Wegman?

A. No.

Q. Do you know anyone attached to any of the respective offices of Barshay or Wegman and Climenko?

A. I don't think so.

Q. Emanuel Weiss is represented by former General Sessions Judge Talley. Do you know Judge Talley?

A. No.

Q. Any member of his office staff?

A. I don't think so.

Q. Or Mr. Cuff, a former Assistant in Kings County?

A. No.

Q. Mr. Murray Kriendler, a former Assistant United States Attorney?

A. No.

[fol. 221] Q. Do you know anybody in the offices of Mr. Cuff or Mr. Kriendler?

A. No, I don't think I do.

Q. Capone is represented by Mr. Sidney Rosenthal, Mr. Leon Fischbein, and Mr. Emanuel Rosenberg. Do you know any of those lawyers?

A. No.

Q. Or anyone in their offices?

A. No.

Q. Your work for the law firm that you have disclosed to the Court is such that you work on figures and on numbers, accounting work, more or less, and bookkeeping work?

A. Yes, now it does.

Q. You don't write briefs or discuss law?

A. No.

Q. Do you have any bias or prejudice against the prosecutor of the county, Judge O'Dwyer, or against the prosecution for using the testimony of co-participants in the crime against the defendants on trial?

A. No.

Q. Will you take the law exclusively from the Judge as to what corroboration is required of that type of individual?

A. Yes.

Q. In the event the defendant or a defendant or any of the defendants or any one or more of them should invoke a defense of alibi, will you take the law exclusively from the Judge as to the law applicable to that type of defense?

A. Yes.

Q. There were various names that I read to the other jurors. Particularly may I direct your attention to the names of officials of the Amalgamated Clothing Workers [fol. 222] of America. Are any of their names familiar to you?

A. No they were not.

Q. You do not have any contact, directly or indirectly, with those individuals?

A. No.

Q. For example, is the name Potofsky or the name of Weinstein or Katz familiar to you at all?

A. No.

Q. Officials of the Amalgamated Union?

A. No.

Q. The name of Bruno Belia, an organizer of the Amalgamated, is his name familiar to you?

A. No.

Q. The name of Salvatore Marazzano familiar to you?

A. No.

Q. Do you know any officials of the Local 240 of the Clothing Drivers & Helpers Union?

A. No.

Q. Do you know any officials of the Flour Trucking Union, specifically, Local 138?

A. No.

Q. Is the name of Wolfie Goldis or Max Silverman familiar?

A. No.

Q. The name of Philip Orlofsky, one-time general manager of the Amalgamated, is that name familiar at all to you?

A. No, it is not.

Q. Or Willie Alberts, a one-time bondsman?

A. No.

Q. The name of Emanuel Buchalter or Phillie Buchalter familiar?

A. No.

Q. The name of Bellanca or Tosca familiar?

A. No.

Q. The name of anyone by the name of Weiss or any company which rents out automobiles in the Park Slope district of Brooklyn, is that familiar to you in any way?

A. No.

[fol. 223] Q. Do you know intimately any member of the bar who practices criminal law as a specialty?

A. Just an attorney on the Attorney General's staff.

Q. Who is that?

A. M. B. Quint.

Q. Of Mr. Amen's staff?

A. That is right.

Q. You know no other member of the bar who specializes in the defense of criminal cases?

A. No.

Q. The name of William W. Kleinman or David Price, is that familiar to you?

A. No.

Q. Or the name of Saul Price in Manhattan?

A. No.

Q. If accepted as a juror in the case, you will take the law exclusively from the Court; is that correct?

A. Yes.

Q. If selected as a juror and thus automatically become the foreman of the jury, will you endeavor to listen to common sense and reason in the discussions in the jury room?

A. Yes.

Q. If selected as a juror will you endeavor to do justice in this case?

A. Yes.

Q. Assuming you are selected as a juror and you take your place in the jury box and you hear all the evidence in the case, then you hear the defense lawyers sum up to the jury and draw their inferences from the testimony, and their arguments, then you hear the prosecutor draw his inferences and then the learned Court address you on the law, and you discuss the case with the other jurors in the jury room sensibly and without bitterness, and you come to the conclusion that upon all the evidence in the [fol. 224] case there are at this bar of justice beyond a reasonable doubt three guilty men, Buchalter, Weiss, and Capone, will you say so in your verdict?

A. Yes.

Q. Would you have any hesitation, fear or reluctance in so finding?

A. No.

The Court: The precise location of that plumbing supply house may have some bearing on the possible familiarity of the salesman. He knows the employees.

By Mr. Turkus:

Q. At the suggestion of the Court, Mr. Cole: Do you know where Saltser & Weinsier's place is located?

A. Approximately, I know about the number. I think it is 430-something Sutter Avenue.

By The Court:

Q. Near what street?

A. I don't know the street. I know just how to go there.

Q. Would that be in the East New York or the Brownsville?

A. Brownsville.

Mr. Turkus: Brownsville.

By Mr. Turkus:

Q. The place of occurrence of the murder in this case was at 725 Sutter Avenue. Do you know whether or not you were not going to this Sutter Avenue district of Brooklyn or the Brownsville district as early as 1936?

A. No, I did not go there myself at that time, but my brother worked there. My brother still works there.

[fol. 225] By The Court:

Q. Did you make out the income tax reports at that time?

A. Yes, I did.

Q. That was only a few blocks removed?

A. That is right.

Q. Three blocks removed?

A. The employees came to my house at that time.

Q. No discussion about the murder?

A. No.

Q. Nothing ever said?

A. Yes, at that time my brother did talk about it.

Q. That was an alleged street shooting?

A. Yes.

Mr. Turkus: Store.

The Witness: Store shooting.

Q. You knew that?

A. Yes.

Q. You heard that?

A. Yes.

Q. From discussion?

A. From discussion.

Q. With your brother?

A. Yes.

Q. Where did your brother live?

A. My brother worked right in Saltser & Weinsier.

Q. That is where you got the income tax business?

A. Yes.

Q. And he came home and told you about the shooting?

A. Yes.

Q. Just answer this yes or no without going into details. Was anything discussed as to who might be responsible for the shooting?

A. No.

Q. Or as to the reason for the shooting?

A. No.

[fol. 226] Mr. Barshay: If your Honor pleases, I could not hear the discussion. May I ask this question: Was your Honor interrogating the gentleman with respect to this case?

The Court: Yes, precisely.

(Questions and answers read.)

By Mr. Turkus:

Q. Am I sure, Mr. Cole, that you have no embarrassment or reluctance in serving on this case?

A. No.

Q. None of your outside contacts or connections in any kind, manner, shape, or form will have any effect on your deliberations on the one issue in the case, the guilt or innocence of the three at the bar of justice?

A. No.

Q. And specifically, if you are satisfied beyond a reasonable doubt on all the evidence that these are three guilty men, you won't have any embarrassment or hesitation in saying so in your verdict?

A. No.

Q. None of your outside connections will influence it?

A. No.

By Mr. Barshay:

Q. Mr. Cole, was Mr. Appieton of your firm ever a Magistrate?

A. No.

Q. Was it a brother, do you know?

A. I do not think any relation of his.

Q. How long have you been with the firm?

A. About nineteen years.

Q. And during the nineteen years was there ever a time [fol. 227] when any criminal matter arose in your office?

A. No, I don't think so.

Q. Was there an appeal involving a criminal matter during the years that you were there?

A. No, I don't think so.

Q. How many employees has the firm?

A. About twenty or twenty-two.

Q. And of them how many are lawyers?

A. Roughly I would say eleven.

Q. Do any of them have the privilege of practicing exclusively— Withdrawn.

Q. They have the privilege of practicing law other than that law connected with the firm?

A. No.

Q. They all work for the firm?

A. All work for the firm.

Q. And do any of them have any criminal matters whatever?

A. No.

Q. Do you read law yourself?

A. No, I do not.

Q. Did you ever study law?

A. No.

Q. Did you ever hear any criminal cases discussed that were not in your office, in the office when you were working there?

A. I may have. I know in recent years I have not.

Q. So as far as you are concerned you have no direct contact with any part of the criminal law?

A. Yes, sir.

Q. Nor any indirect contact with it?

A. Yes.

Q. Mr. Turkus has said to you, or rather, has asked you whether you know any of the lawyers for the defense. [fol. 228] Do you *you* know any of the lawyers for the prosecution?

A. No.

Q. He said the lawyers for the defendants number nine. I may tell you the lawyers for the prosecution number about thirty-five.

Mr. Turkus: In this case?

Mr. Barshay: Yes. Only two of them are appearing in court just at present.

Mr. Turkus: I object to Mr. Barshay stating what he knows about Judge O'Dwyer's office. He is not an Assistant District Attorney now.

The Court: Go ahead with the questions.

Q. Do you know anybody in that office?

A. I don't think so.

Q. Do you know anybody in the Police Department?

A. Some of the officers, yes.

Q. Intimately?

A. Friendly with them.

Q. High officials?

A. No.

Q. Officials who are assigned to that section of Brownsville where that firm Saltser & Weinsier has its place of business?

A. No.

Q. Did you ever discuss this case with any police officials?

A. No, I have not.

Q. Is there any prejudice in your mind, sir, because the defendants here are represented by nine counsel?

A. No.

Q. Not at all?

A. None at all.

Q. Or is there any prejudice in your mind because some [fol. 229] of us have had official office before?

A. No.

Q. Only a short time ago our positions were changed. Mr. Turkus for years was a specialist in criminal law.

Mr. Turkus: I object to Mr. Barshay giving me a certificate of ability. That has nothing to do with the qualification of the juror.

The Court: It is of no consequence.

Mr. Turkus: Of course it is not.

The Court: Finish your question.

Q. That has nothing to do with the case?

A. No.

Q. Isn't that so?

A. Yes, sir.

Q. Fate decreed that the positions be changed, that's all.

Mr. Turkus: I object to it. Nothing about fate here. I was appointed by Judge O'Dwyer as an Assistant District Attorney, and that is the end of it.

The Court: That is not the end of it; that is the beginning of it.

Mr. Turkus: I hope so.

The Court: We will take a recess until two o'clock.

(To Mr. Cole) Do not discuss the case. Be back here at two o'clock, when questioning will be resumed.

The defendants are remanded.

The other jurors return at two o'clock.

(Recess taken to 2:00 P. M.)

[fol. 230] Afternoon Session—Trial Resumed

JOSEPH A. COLE resumed the stand and testified further as follows:

By Mr. Barshay:

Q. Mr. Cole, you said you are a friend of Assistant Attorney General Quint of Mr. Amen's office?

A. Yes.

Q. Are you an intimate friend of his?

A. I worked with him for about six or seven years.

Q. And have you been working with him since his appointment as an Assistant Attorney General?

A. No.

Q. Have you seen him since?

A. Yes, two or three times.

Q. And have you talked about his work there?

A. Generally. I just know a little bit of it.

Q. Mr. Cole, do you know whether or not, or can you recall whether or not you and Mr. Quint spoke about this case?

A. I don't think we did.

Q. You say you don't think you did?

A. I am quite sure.

Q. Is there a doubt in your mind?

A. I am quite sure.

Q. The fact that Mr. Quint is an Attorney General would not have any influence upon you in this case, would it?

A. No.

Q. You, of course, never heard any propositions of criminal law from him?

A. No.

Q. Never? You said that you read the papers serially with respect to this case; am I correct?

A. Yes.

Q. Was one of the papers the *New York Daily Mirror*?

A. No.

[fol. 231] Q. Was it the *New York American* or the *New York Journal*?

A. No.

Q. Was it the *Brooklyn Eagle*?

A. No.

Q. May I have from you what paper?

A. *Telegram*, it could have been the *News*, or the *Sun*. It might have been *P. M.*

Q. *P. M.* had features about this case too?

A. Yes, it was the first day or the second day.

Q. You are right, sir, the first day you were called here on August 4th, the afternoon issue had a two-page spread with pictures.

A. Yes.

Q. About this case. You read that?

A. Not entirely. I happened to pick it up and saw it and read a little bit of it and did not finish it.

Q. The picture of one of the defendants, at least, was there?

A. Yes.

Q. Without mentioning any names?

A. Yes.

Q. And a little history of the case?

A. Yes.

Q. As the result of reading that or part of it, did you form any impression with respect to this case?

A. Yes, I have.

Q. Is that impression that you formed by reason of reading that article detrimental to any of the defendants?

A. Yes, I think so.

Q. And, being under that impression, can I have you tell me whether or not you would be precluded from being a fair and impartial juror in this case?

A. Yes, I think so.

[fol. 232] That is your honest opinion?

A. Yes.

Mr. Barshay: Challenge the juror for cause.

Mr. Talley: Join in.

The Court: Try it.

Mr. Cuff: Join in.

JOSEPH A. COLE, being duly sworn, testified as follows:

By Mr. Barshay:

Q. Mr. Cole, if I ask you now the same questions that I just asked you before you were sworn, would you give the same answers?

A. Yes, I would.

Mr. Barshay: May I stop here and renew my challenge for cause, sir?

By Mr. Turkus:

Q. Mr. Cole, I think when I asked you questions you said you had never sat as a juror in a criminal case. Is my memory correct?

A. Yes, that is so.

Q. Do you understand now since the questioning that the burden of proof to establish guilt rests upon the prosecutor?

A. Yes.

Q. And that guilt must be established by the evidence adduced in the court-room to your satisfaction beyond a reasonable doubt?

A. Yes.

Q. Do you feel now that your state of mind is such that you would be inclined to substitute some picture or some [fol. 233] little article that you saw in a *P. M.* newspaper or any other newspaper for the proof that the District Attorney must bring into a court-room?

A. I am afraid it might. It might put the burden on them.

Q. You mean you feel prejudiced against the defendants?

A. Yes.

Mr. Barshay: On behalf of all defendants, sir, I renew my challenge for cause.

The Court: Sustained.

(JOHN R. HAMILTON, of 317 East 29th Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.)

By Mr. Turkus:

Q. Mr. Hamilton, do you live in the Flatbush section of Brooklyn?

A. That is correct.

Q. Did you make an application for excuse from jury service?

A. That is right. My firm asked that I be excused.

Q. Defense counsel have asked me to ask you to speak loudly so that they may hear what you have to say.

A. I will try to.

Q. Was that at the request of your firm? Was there a question of your health involved?

A. No, sir.

Q. So that there is nothing the matter with you physically to sit on this jury?

A. That is right.

Q. Is there anything about the nature of your work that at this time would impair your service as a jurymen— [fol. 234] by that I mean is there something pressing about your excuse?

A. No, it is merely that the work is very difficult to replace, that is all.

Q. You live in the Flatbush section of Brooklyn?

A. That is right.

Q. Have you lived there for a number of years?

A. About four, approximately four years.

By the Court:

Q. That is in the vicinity of Church Avenue and Nostrand?

A. That is correct.

By Mr. Turkus:

Q. Is your profession that of an accountant?

A. And clerk.

Q. By whom are you employed?

A. The National Car Loading Corporation.

Q. It has offices in Manhattan?

A. That is right.

Q. Does your business keep you inside the office or do you work outside?

A. Inside.

Q. Have you any contacts, by way of business or any other way, in the Brownsville section of Brooklyn?

A. No.

Q. Did you ever have any such contacts with any persons or firms in that area?

A. Is that near the New Lots section?

Q. New Lots section would be part of Brownsville and East New York.

A. No.

Q. Have you any contacts in the New Lots section of Brooklyn?

A. No, I just wanted to make sure where the Brownsville [fol. 235] section was.

Q. That is out around Pitkin Avenue, Sutter Avenue.

A. No.

Q. Did business bring you into any contact with the garment district in Manhattan?

A. No.

Q. Or the clothing district?

A. No.

Q. Did you ever have any contacts with any persons or firms in either the clothing district or the garment district?

A. No, unless they ship over our lines. That I do not know.

Q. That does not bring you in any personal contact?

A. It does not bring me in personal contact.

By the Court:

Q. What is the National Car Loading Association?

A. They load cars into freight cars throughout the United States—

Q. What kind of cars do they load into freight cars?

A. All type of freights.

Q. They load freight cars?

A. That is right.

Q. Sort of a stevedoring business?

A. Not exactly, more shippers agents. Merchandise that the railroads do not handle on carload basis.

Q. Just what does your concern do with that merchandise? They consolidate them into cars and ship them to our other offices throughout the United States and distribute them.

Q. You mean that merchandise which is shipped in small lots, too small for the shippers to ship by freight?

A. That is right.

[fol. 236] Q. And after accepted by the railroad is taken by your company and then the shipments of various shippers is consolidated by you into one shipment and you hire the freight car and put the stuff in?

A. That is right.

Q. And you profit by taking the difference between the carload lot rates and the less-than-carload-lot rates? That is your profit?

A. Yes, that is right.

By Mr. Turkus:

Q. Do you have any contact with clothing trucking?

A. No, sir.

Q. Did you at any time have any business contact or any other contact with people in the clothing trucking industry?

A. No.

Q. Since your name appeared upon the special panel and notification was given you that you might serve in this case, did anybody speak to you about the case?

A. No.

Q. Are you in sympathy with law enforcement?

A. Yes.

Q. In connection with your work of car loading that you have described to the Court, did you come in any contact with the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Do you know any officials in that union?

A. No.

Q. Is the name of Jacob Potofsky familiar to you?

A. No, sir.

Q. Or the name of Murray Weinstein?

A. No, sir.

Q. The name of Sam Katz?

A. No, sir.

Q. Did you come in any contact, directly or indirectly, with any officials of local 240 of the Clothing Drivers and Helpers Union?

A. No, sir.

[fol. 237] Q. Is the name of Philip Orlofsky, a one-time manager of the Cutters Union, Local 4, associated with the Amalgamated familiar to you?

A. No, sir.

Q. Is the name of Bruno Belia familiar?

A. No, sir.

Q. Or that of Salvatore Marazzano?

A. No, sir.

Q. The name of Abe or Abraham Beckerman, or Yudelowitz?

A. No, sir.

Q. Did you have any contact, direct or indirect, with anybody in Local 138 of the Flour Truckmens Union?

A. No, sir.

Q. In this carloading work that you handle, do you have any shipments of flour or any shipments of clothes or clothing?

A. I am not familiar with that angle of the work at all. My work is strictly accounting.

Q. Your work is devoted to the time you spend on books?

A. That is right.

Q. That is the bookkeeping department of this company?

A. The other work is handled by another office.

Q. So that you have no personal contact with any of the shippers?

A. That is right.

Q. Is the name of Max Silverman or Wolfie Goldis familiar?

A. No, sir.

Q. Or that of Willie or William Alberts, a one-time bondsman?

A. No, sir.

Q. The name of Emanuel Buchalter familiar?

A. No, sir.

Q. Or Phillie Buchalter, Phillie Kowas?

A. No.

[fol. 238] Q. The name of Bellanca or Tosca familiar?

A. No, sir.

Q. Do you know anybody by the name of Weiss in the automobile rental business?

A. No, sir.

Q. In the Park Slope section of Brooklyn?

A. No, sir.

Q. Do you know anybody in the automobile rental business, that is, renting out cars by the hour or day?

A. No, sir.

Q. Have no such contacts?

A. That is right.

Q. There are three lawyers representing the defendant: Buchalter, Mr. Barshay, a former Assistant District Attorney in this County, Mr. Wegman, a former Assistant United States Attorney, and Mr. Climenko. Do you know any of the three?

A. No, sir.

Q. Do you know anyone connected with them in the practice of the law or employed in their law offices?

A. Not to my knowledge.

Q. Defendant Weiss is represented by former General Sessions Judge Talley. Do you know him?

A. No, sir.

Q. Anyone in his office?

A. Not to my knowledge.

Q. Two other lawyers for Weiss associated with Judge Talley are former Assistant District Attorney Cuff and former Assistant United States Attorney Kriendler. Do you know any one of them?

A. No, sir.

Q. Or anybody in their respective law offices?

A. Not to my knowledge.

Q. Capone is represented by Mr. Rosenthal, Mr. Fisch-[fol. 239] bein, and Mr. Rosenberg. Do you know any of those gentlemen whose names I have enumerated?

A. No, sir.

Q. Anybody in their law offices?

A. Not to my knowledge.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. No, sir.

Q. Is the name of William W. Kleinman, or David Price familiar?

A. No, sir.

Q. Or that of Saul Price, a former Assistant District Attorney in Manhattan?

A. No, sir.

Q. You have had no contacts, directly or indirectly, by way of business or by way of any social connections with anyone in the Brownsville-East New York, the garment or clothing districts in Manhattan, or the Brooklyn waterfront; is that correct?

A. That is right.

Q. Have you heretofore sat as a juror in a criminal case?

A. I never sat as a juror.

Q. In any type of case?

A. That is right.

Q. Have you ever been interrogated as to your qualifications for jury service prior to this experience?

A. No, sir.

Q. I take it that you understand that Judge Taylor is the one who has the exclusive province of telling the jury the law in the case?

A. Yes.

Q. Will you accept the law from Judge Taylor without qualification?

A. Yes, sir.

Q. If you are charged as a matter of law that defendants [fol. 240] are presumed to be innocent, that The People of the State of New York have the burden of establishing their guilt beyond a reasonable doubt, will you follow the Court's instructions?

A. Yes, sir.

Q. Have you any bias or prejudice against the prosecutor of the county or against the prosecution which uses the testimony of co-participants in the murder to testify against the defendants on trial?

A. Are you referring to the credibility of the witness?

Q. No, I am not going into credibility, because that is something that we will discuss later. First I want to find out if you have any prejudice against the prosecutor.

A. No.

Q. Or against the prosecution.

A. No.

Q. Would you close your ears to the testimony of an accomplice solely because he was an accomplice?

A. No.

Q. Would you listen to his story and apply the tests of credibility that the Court instructs you should be applied to that type of witness?

A. Yes, sir.

Q. Do you find any fault with the use of that type of testimony?

A. No.

Q. Does the prosecution start off with any handicap in your mind because that type of testimony is employed?

A. No.

Q. Have you any bias or any prejudice against so-called expert testimony?

A. No, sir.

Q. For example, you have no feeling against handwriting [fol. 241] testimony, medical testimony, that is, emanating from an expert?

A. No.

Q. Do you know Judge O'Dwyer, the District Attorney of the County?

A. No, sir.

Q. Do you know any member of his staff?

A. No.

Q. Specifically, do you know Assistant District Attorneys Turkus, Klein, or Joseph?

A. No, sir.

Q. Is there anything about the nature of the case that would prevent you from being a fair and impartial juror?

A. No, sir.

Q. Have you any scruple, conscientious or otherwise, against capital punishment?

A. No.

Q. Would you permit the question of punishment to enter into your deliberations as to the guilt or innocence of the defendants?

A. No, sir.

By The Court:

Q. Does your concern deal with loaders?

A. Yes, sir.

Q. On the railroad platforms?

A. Some we employ, men on our own payroll, and others we hire.

Q. How are those public loaders hired?

A. That I do not know. That is the concern of the local offices. I am associated with the general office.

Q. Who is the head of your concern, the president?

A. They just had a new one, Mr. Dilhofer.

Q. Where is your office?

A. 19 Rector Street.

Mr. Talley: If your Honor pleases, it was impossible [fol. 242] to hear.

Q. That is near Church Street? That is on Rector Street near Church?

A. Rector and Greenwich, between Greenwich and Washington.

Q. The numbers run from West Street towards Broadway?

A. No, sir, they run from Broadway to West Street.

By Mr. Turkus:

Q. Did you know the former prosecutor of Kings County, Mr. Geoghan, or any member of his staff?

A. No, sir.

Q. If selected as a juror in this case, will you endeavor to listen to reason and the logical argument of your fellow jurors in the case when it is being deliberated in the jury room?

A. Yes, sir.

Q. And will you, in determining the one issue in the case, the guilt or innocence of the defendants at the bar, use the every-day business experience that you have acquired in weighing the believability of witnesses and in settling that problem according to justice?

A. Yes, sir.

Q. Do you know of any reason concerning which I have made no inquiry which would affect your qualification or ability to sit as a fair and impartial juror in this case?

A. No, sir.

Q. Do you sit in the jury box free from prejudice?

A. As far as I can tell, yes, sir.

Q. With an open mind, ready to receive the evidence in the case?

A. That is right.

[fol. 243] Q. Assuming, then, that you have heard all the evidence in the case and you have had the benefit of the defendants' lawyers summing up and drawing their inferences from the testimony and the prosecutor drawing his inferences and then the learned Court charges you on the law and you have deliberated without rancor and fairly and reasonably with the other jurors in the case and you come to the conclusion beyond a reasonable doubt that at the bar of justice there are three guilty men, Buchalter, Capone, and Weiss, will you hesitate to say so in your verdict?

A. No.

Q. Would you have any fear or reluctance to say so in your verdict?

A. No.

Q. Is there any experience you have had in your past life or any business connection that you have presently which would interfere with the rendition of that kind of a verdict?

A. No, sir.

Q. If selected as a juror in the case, will you endeavor to do justice in the case?

A. Yes, sir.

By Mr. Barshay:

Q. May I ask if you are married, sir?

A. Yes, sir.

Q. Have you ever studied law, Mr. Hamilton?

A. No, sir.

Q. Has any member of your family been a lawyer?

A. No, sir.

Q. Have you ever been on any Grand Jury?

A. No, sir.

Q. Has any member of your family been on any Grand Jury?

A. No, sir.

[fol. 244] Q. Do you know anything at all connected with the law enforcing agencies of the City or State of New York?

A. No, sir.

Q. Or of the United States Government?

A. No.

Q. Have you ever been a victim of a crime?

A. No, sir.

Q. Any close member of your family or intimate friend been the victim of a crime?

A. No.

Q. Or your employer?

A. Throughout the United States our firm has been victimized at times, but that is all.

Q. Your firm has been victimized throughout the United States?

A. Yes, sir.

Q. Any one of those instances were you closely connected?

A. No, I was not connected at all.

Q. And, Mr. Hamilton, the fact that your firm has been the victim one place or another, one time or another of a crime, has that created a prejudice in your mind against these defendants?

A. No.

Q. Or against any of them? No doubt about that? Did you read about this case at the time of its occurrence?

A. I read one article in the paper.

Q. May I know in what paper?

A. The *Mirror*.

Q. *Daily Mirror*?

A. Yes, sir.

Q. May I know how long ago?

A. Approximately a month, I should say.

Q. Was it since you were called as a juror here?

A. It was about the time I was, I guess.

[fol. 245] Q. Is that the only time you read that article?

A. That is right.

Q. And did it leave an impression with you?

A. It was not on this case at all, but it was about the defendant.

Q. Was it concerning one of the defendants involved in this case?

A. Yes, sir.

Q. According to the indictment?

A. Yes, sir.

[fol. 246] Q. Without mentioning his name, did it prejudice you against that particular defendant?

A. I don't think so.

Q. You say you don't think so. I take it that implies some doubt in your mind. Am I correct?

A. It is hard to dissociate the impression.

Q. It is hard to dissociate the impression that you gathered?

A. Yes, sir.

Q. And the impression, I take it, was an unfavorable one to that defendant, isn't that so?

A. It would be, yes, the way the article was written.

Q. The way the article was written tended to create an unfavorable impression with respect to that defendant in your mind; isn't that so?

A. I would say so.

Q. And that impression still remains with you?

A. Yes, sir.

Q. And that is an impression that is prejudicial to that particular defendant?

A. Yes, sir.

Q. And if you were sworn as a juror, it would need some proof or evidence to dissipate that impression; is that so?

A. I am afraid so.

Q. You are afraid so? So that when you said that you could do justice, you did not mean exactly that, because somewhere else in your mind—

A. I don't think it goes as far as that, Counselor.

Q. It does not go that far?

A. No, it is more or less just a vague—you know what I mean—a vague impression.

[fol. 247] Q. Do you know whether or not you believe the accuracy or the truth of those articles?

A. As far as the material, I would say yes.

Q. The substance of that article seemed to you to be the truth, isn't that so?

A. Yes, sir.

Q. And that too was to the prejudice of that particular defendant?

A. Yes.

Q. And you have not eliminated that prejudice yet?

A. Not completely, no.

By the Court:

Q. Have you relatives in Brooklyn by the same name?

A. Yes, sir.

Q. Dr. Hamilton?

A. No, sir.

Mr. Barshay: Your Honor, on behalf of all the defendants, I challenge this juror for cause.

The Court: Try the challenge.

JOHN R. HAMILTON, of 317 East 29th Street, was then sworn.

By Mr. Barshay:

Q. Now that you are under oath, Mr. Hamilton, would you answer the question that I asked you a few minutes ago in the same manner?

A. I would.

Q. As you answered them before?

A. I would.

Mr. Barshay: I urge the challenge for cause, your Honor.
[fol. 248] The Court: Any other questions by any other counsel?

Mr. Rosenthal: No further questions.

Mr. Talley: No further questions on this challenge.

By Mr. Turkus:

Q. Mr. Hamilton, I think you said, when I interrogated you, that you had had no prior experience as a juror in any type of litigation. Is my memory correct on that?

A. That is right.

Q. In other words, you have sat through no criminal case and have not had the benefit of listening to the Judge's instruction on the law?

A. That is correct.

Q. Do you find any fault with the judicial principle that defendants are presumed to be innocent when they sit down in the court-room?

A. No.

Q. And do you find any fault with our American system that the prosecutor must establish the guilt of the defendants beyond a reasonable doubt?

Mr. Barshay: Your Honor, may I object to it at this time that it is not the subject of the challenge that I made?

The Court: Overruled.

Mr. Barshay: Exception.

Q. (Pending question read.)

A. No.

Q. You agree, do you not, that he must establish such guilt by the evidence that he adduces in the court-room, that he presents before a Court and jury; is that clear?

A. I do.

Q. To the satisfaction of the minds of the jury beyond a [fel. 249] reasonable doubt that the men at the bar of justice are guilty; is that right?

A. That is right.

Q. Do you agree that no prosecutor can substitute a newspaper article for that type of testimony?

A. That is right.

Q. There was something that you read about a month ago in one issue of a newspaper, I think you said to Mr. Barshay, that caused you to form an impression concerning one defendant in the case; is that right?

The Court: He did not say concerning his guilt or innocence on this charge.

Mr. Turkus: That is right.

Q. That article, as I understand from what you said to Mr. Barshay, was not directed to the Rosen case.

A. That is right.

Q. Whatever you read in that single issue of the newspaper in regard to some matter extraneous or foreign to the Rosen case, did that give you an opinion as to the guilt of innocence of the defendants in the Rosen case?

A. No, sir, I did not mean it that way. I meant it as purely a general opinion as to his character, his former record.

Q. Do you find any fault with the principle that a defendant in a criminal case has no burden at all, the burden is entirely with the District Attorney?

A. No.

Q. Would the reading of that one issue of a newspaper prevent you from deciding the issue in the case, the guilt or innocence of the three at the bar, on a charge of murder [fol. 250] in the first degree? Would you be prevented from being fair and impartial in your judgment as a juror from the context of that one article?

A. No.

Q. Do you feel that in deliberating, in pondering over the guilt or innocence of the defendants on trial in the Rosen case, that you could banish any impression that you received from the one reading of that newspaper?

A. I think I could.

Q. You say you think you could. No one is the better judge of that than you are, Mr. Hamilton. Can you conscientiously say that you can lay aside the impression that you gathered from the reading of that one article, and decide this case on the evidence you hear in the court-room?

A. Yes.

By Mr. Barshay:

Q. Mr. Hamilton?

A. Yes, sir.

Q. You told Mr. Turkus that you are in sympathy with law enforcement.

A. That is right.

Q. That has a wide meaning. You know that. It means that a defendant is entitled to be tried by a jury of his peers, and that jury must be composed of men who are absolutely

free of sympathy for him or free of prejudice against him. Do you agree with that?

A. I do.

Q. That means that you must not only have no opinion with respect to his guilt in this case, but you must be absolutely unprejudiced against him in any respect whatever, isn't that so?

[fol. 251] The Court: Mr. Barshay, is that what it means? Doesn't it mean political peers, people with equal civil rights?

Mr. Barshay: Judge, I don't think that it means that.

The Court: I think that is the meaning of the English common law, because otherwise a commoner might be tried by members of the peerage, and they might take a view of his social status which might work against him; consequently the commoners insisted on a jury of the defendant's peers, people with equal civil rights.

Mr. Barshay: That was the origin.

The Court: Not moral rights. It does not go to the question of prejudice at all.

Mr. Barsbay: Your Honor, that was the origin of the reason for the statement that every person is entitled to a trial by his peers.

The Court: It would mean that a serf would be entitled to be tried by a jury of serfs. I am talking about the British common law. It would mean that a member of the nobility would be entitled to be tried in the House of Lords.

Mr. Barshay: That is what it meant then.

The Court: That is what it means today.

Mr. Barshay: The application of the rule, then, your Honor means that this man here or any of the defendants is entitled to a trial by a jury of their peers.

The Court: People with the same civil rights.

[fol. 252] Mr. Barshay: I do not know of any distinction, sir, in any rights that people have in this community.

The Court: The discussion will not be continued.

Mr. Barshay: May I press my question?

The Court: You may ask the question, but it seems to me to be academic. If there is any objection to it—

Mr. Barshay: There is no objection to it.

The Court: It seems in the nature of an examination on a scholastic or an academic question.

By Mr. Barshay:

Q. Be that as it may, Mr. Hamilton, do you agree with the law that every defendant is entitled to a trial by men who compose a jury free of any prejudice at all against the defendant?

A. That is right.

Q. Whether it is with respect to this case, or his race or his color, or his social standing; isn't that so?

A. That is right.

Q. You do not waver on that point, do you?

A. No.

Q. But you told us a little while ago that the article you read created a prejudice against one of the defendants because of his character.

A. Merely a reflection on his character, and not a prejudice against the man as far as he stands in court is concerned.

Q. So that it caused some prejudice against that defendant, whoever he may be; is that so?

A. In that one respect, yes.

[fol. 253] Q. That is in violation of the simple rule that you must be a man free of any prejudice against the defendant; isn't that so?

A. That is right.

Q. I did not hear your answer.

A. That is right.

Q. If you took an oath to be a fair and impartial juror, ready to render a verdict without sympathy or prejudice, and you felt the way you feel now, you would be violating that oath, would you not?

A. I don't think so.

Q. You don't think so?

A. No, sir.

Q. Can you explain how you can subdivide the prejudice?

The Court: Is not that too fine?

Mr. Barshay: I withdraw the question.

The Court: Mr. Barshay, I hope you do not think I am intruding in your examination. Supposing we take a hypothetical case. Many of the defendants who are brought into this court are unkempt and they don't present a very nice appearance. It is elementary that we form quick impressions concerning character, concerning people whom we meet, by looking at them. The moment that a member

of the jury looks at many a man who is brought in here for trial, there is an impression adverse to the defendant. But nevertheless, he must be tried, and the question is, Is the jurymen willing and able and does he promise to lay aside any impression of that kind and decide the case strictly upon the evidence. That seems to me to be the question.

[fol. 254] Q. Mr. Hamilton, would it take any evidence on the part of that particular defendant to remove that prejudice that you have against the character of that defendant?

A. No.

Q. It would not?

A. No, sir.

Q. Would you want him to present some evidence of good character in order to dissipate the impression you now have?

A. No, sir.

Q. Your answer is no?

A. That is right.

Q. If it came to a point where his credibility was involved, would the fact that that article caused some prejudice in your mind with reference to his character cause you to discredit that man on a given point of testimony?

A. The credibility?

Q. If that man whom you have in mind should take the stand and testify with respect to a specific issue in this case, and you are the judge of the credibility of that man, would the fact that you read that article to that man's prejudice, cause you to disbelieve him because you had made up your mind as to the bad character of that man?

A. No.

Q. You would not?

A. No, sir.

Q. You know, sir, that character is not an issue in this case at all unless the defendant puts it in issue?

A. That is right.

Q. Nor that reputation has nothing to do with this case unless the man puts it in issue?

A. That is right.

Q. Will you follow that law? No doubt about it?

A. No doubt.

[fol. 255] Q. You cannot even consider a person's character in deciding the guilt or innocence of that person unless that person puts his character in issue. Do you know that?

A. Yes, sir.

Q. Now, having formed an impression by reading that article as to the man's bad character, and having accepted, as you said, the truth of that article, wouldn't it be difficult for you to dissipate the impression you formed?

A. I would not say difficult, no.

Q. What would you say?

A. It would mean merely a matter of examination and throwing my prejudice to one side.

Q. It would be a matter of examination by whom?

A. By me.

The Court: He said, "and throwing my prejudice to one side."

The Talesman: That is determining how much my position is influenced by that and discount it.

Q. Mr. Hamilton, will it require that that person take the stand so that you can examine him, not orally, but in your mind?

A. No.

Q. Could you dissipate it without that person taking the stand?

A. Yes.

Q. Could you tell us what you shall use as a basis for your examination?

A. I was under the impression that you said his credibility would be in doubt if he took the stand.

Q. Assuming he does not take the stand?

[fol. 256] A. Then it does not matter.

Q. What?

A. Then the prejudice does not matter.

Q. Then the prejudice does not matter?

A. That is right.

Q. If he takes the stand, you say the prejudice will matter?

A. It could matter, but I could discount it. It would matter slightly, but I could discount it.

Q. So that if he took the stand, it would matter slightly, but you could discount it. It will require an effort on your part to discount it,—correct?

A. Some, yes.

Q. And it will require, naturally, that the defendant take the stand?

A. If the defendant took the stand, then I would have to take the prejudice to one side in order to determine the credibility.

By the Court:

Q. Would you be able to do that?

A. I believe so.

Q. Can you give us your promise that you would?

A. Yes, sir; I would make every effort.

By Mr. Barshay:

Q. Supposing, Mr. Hamilton, the defendant does not take the stand?

A. Then the character does not enter into it.

Q. And will you be left with the impression you gained when you read the article?

A. No.

Q. So that up to this moment you do not know whether that impression has been dissipated or not, do you? You do not know?

A. I would say that the impression was not dissipated [fol. 257] as to his character, no.

Q. Just now, as you sit here, you are prejudiced against the character of that particular person; am I right?

A. That is right.

Q. And that prejudice has remained with you since you were here last and read that article?

A. That is right.

Q. That is almost over a month?

A. About that.

Q. Have you read any further articles with respect to that particular defendant?

A. No, sir.

Q. Or with respect to this case?

A. I saw a headline that the case was put off, that is all.

Q. Did the headline contain the name of any particular defendant—yes or no?

A. Yes.

Q. And the headline was prejudicial to that particular defendant?

A. No, sir. It was merely that the case had been postponed.

Q. Do you bear the same feeling towards people who will take the stand and testify out of their own mouth that they are accomplices?

A. The feeling as to their character, their credibility?

Q. Yes, their character or credibility.

A. I would feel that under certain circumstances that the witnesses' testimony would have to be substantiated.

Q. Substantiated?

A. Under certain circumstances.

Q. Assuming, sir, that a man takes the stand and he tells [fol. 258] you all his life he had been a thief, a burglar, an extortioner, a perjurer, and a murderer.

A. A convicted man?

Q. Convicted or otherwise, but out of his own mouth he says that is how he has lived up to the time he takes the stand; he stole, he burglarized, he committed perjury in courts or in other places, would you accept or reject his testimony?

The Court: You have not told the juryman what the law is as to corroboration.

Mr. Barshay: I am not getting to that point yet, Judge. I will reframe my question.

Q. Assuming a witness for the prosecution takes the stand and out of his own mouth he says that he has lived by stealing, by burglarizing, by being a common thief would you accept his testimony with caution, whether he is an accomplice or he is not an accomplice?

A. I would accept it provisionally.

Q. Provisionally?

A. Yes.

Q. Provisionally to what?

A. To being supported with other evidence.

Q. And if the other evidence shall be furnished by a person who is not an accomplice but who, out of his own mouth, will testify here in court that he has committed six murders, he has already participated in the commission of six, would you then evaluate that testimony with a great deal of caution?

A. I would have to.

Q. You would have to?

A. I am afraid so.

[fol. 259] Q. You promise you would?

A. Yes, sir.

Q. Are you in any wise prejudiced against that type of testimony, whether it is substantiated or not?

A. That type of testimony would have to be substantiated for me.

Q. Without any doubt?

A. Without any doubt.

Q. You would not accept it, would you, without close examination?

A. I would not accept it, but I would not throw it away, either, until it has been either substantiated or not substantiated.

Q. You would not require the defendant to disprove anything that a person of that character alleges on the witness stand, would you?

A. No.

Q. You would have to find the proof in The People's case, wouldn't you?

A. Yes, sir.

Q. You would have to find the substantiation in The People's case, wouldn't you?

A. Yes, sir.

Q. No doubt about it?

A. That is right.

Q. Did you read anything at all about any of The People's witnesses in **this case?**

A. No, sir.

Q. At no time?

A. No time.

Q. Did you read anything about Abraham Reles?

A. No.

Q. Did you ever hear the name?

A. I have heard the name in some connection, but I don't know. I don't follow—

Q. Did you ever hear the alias "Kid Twist"? Did you ever hear about Sholem Bernstein?

A. No.

[fol. 260] Q. Did you ever hear about Allie Tannenbaum?

A. No.

Q. Did you ever hear about Seymour Magoon?

A. Who?

Q. Seymour Magoon.

A. No.

Q. Not a word?

A. Not a word.

Q. Never heard of them?

A. No.

Q. If Mr. Reles takes the stand and he testifies out of his own mouth, under oath, called by the District Attorney, and he says that he has committed eleven murders, would you be prejudiced against his testimony?

The Court: You cannot state specific names of witnesses and ask the talesman how he would resolve the testimony of that witness as to truth or falsity.

Mr. Turkus: That has already been answered in the prior question.

The Court: You have already asked that without mentioning the name.

Mr. Barshay: I take exception.

Q. Did you read about Dukie Maffatore?

A. No.

Q. Or Abie Levine?

A. No, sir.

Q. Did you read about Julie Catalano?

A. No. If these are criminal names, I don't read any of these cases at all.

Q. So that the only thing you read with respect to any of the defendants is the article in The Mirror?

A. That is right.

Q. You accepted the truth of it?

A. Yes, as to—

Q. What it said?

A. As to the facts contained.

[fol. 261] Q. So that a mere reading, without any substantiation on anybody's part, caused an impression in your mind to accept the truth of that article; is that correct?

A. That is right.

Q. But assuming the facts as I gave them to you, that these men would testify and they would admit the commission of those respective crimes, assuming that were to be the fact, if you were chosen as a juror and you heard that from the witness stand would you be prejudiced against their testimony?

The Court: Counselor, the Court will have to make a charge to that effect.

Mr. Barshay: If the Court so charges.

The Court: You mean the Court would have to make the charge. In such contingency that he may so consider as having a bearing on credibility.

Mr. Barshay: But without the Court's charge or anybody's charge, your Honor, this man has already formed an opinion with respect—

The Court: I am just cautioning you as to the law.

Mr. Barshay: I amended my question as your Honor suggested. If the Court shall so charge you.

By the Court:

Q. If the Court charges you, in the event these men take the stand and admit matters that you read about in *The Mirror*, that you may consider that in determining whether they are truthful witnesses, will you follow the charge of the Court?

[Vol. 262] A. Yes.

Mr. Barshay: I except to that question, sir, as not the correct statement of the law.

The Court: You asked it.

Mr. Barshay: Not with respect to the person mentioned in *The Mirror* article.

The Court: I beg pardon. I misunderstood you.

By Mr. Barshay:

Q. Would you accept the testimony of the accomplices more readily against any of the defendants because of what you read concerning any particular defendant in the article you mentioned?

A. No.

Q. Would you use it at all in weighing the credibility?

A. No.

Q. Do you know that no defendant need take the stand to disprove a charge against him?

A. That is right.

Q. You know that every defendant in this case is presumed as innocent of the charge against him as you are?

A. Yes, sir.

Q. Do you know that?

A. Yes.

Q. And do you know that the District Attorney is required throughout the entire case to prove the guilt of the defendant beyond a reasonable doubt?

A. That is right.

Q. And you know that the defendant can remain silent in his seat and never answer the charge against him, as the result of which you have no right to draw any unfavorable [fol. 263] inference against him?

A. Yes.

Q. You know that?

A. Yes.

Q. If that should be the case here, would you then draw upon the impression that remains with you at this moment as the result of what you read in *The Mirror* and use it against that particular defendant?

A. No.

Q. You would not? What have you done with that impression up to this second?

A. The impression seems to me to have nothing to do until—

Q. Until when?

A. Until the character of the particular defendant is called upon. If it is not called upon, it has no bearing.

Q. So you are holding that impression in reserve, are you not?

A. No, I am not.

Q. You say "until." Until what?

A. It is just there, and I will remember that I had the impression and I will discount it accordingly.

Q. You will discount it?

A. Accordingly.

Q. At some time in the future?

A. One cannot just erase an impression.

Q. That is what I am trying to get at. Even now, after all this questioning, you have not erased the impression which is prejudicial to the defendant you have in mind; am I right?

A. As to his character only.

Q. As to his character. That would preclude you from [fol. 264] giving a fair and impartial verdict in this case?

A. I don't think so.

Q. It would not? What are you going to do with that impression?

A. I said if the character of that person is called into account; I would discount it in considering his credibility.

By the Court:

Q. By "discount," you mean put aside?

A. That is right. I do not know any other way of expressing it, your Honor.

By Mr. Barshay:

Q. So that if the trial lasts about four or five or six weeks, you will still reserve that impression until such time; is that so?

A. Yes.

Q. And you will be sitting in that box, in that jury box, and all the time you will hear this testimony and somewhere in the back of your head will be that impression waiting for you to either use it or not use it; is that so?

A. Yes.

Q. You say that under oath?

A. Yes.

Mr. Barshay: I challenge the juror for cause.

Mr. Cuff: We join in.

Mr. Turkus: I went over a lengthy——

The Court: Any other counsel for defense?

Mr. Barshay: No questions.

The Court: Any questions by other counsel?

Mr. Rosenthal: Not as to this challenge.

The Court: There is no such thing as the perfect juror. There is no such thing as a jury of isolationists [fol. 265] who never have any contact with the world and never hear anything or see anything that gives them recollection. The question is whether a juror can lay aside his impression, and I think from the entire examination that is sufficiently clear. The challenge is overruled.

Mr. Barshay: We all take an exception, your Honor.

The Court: Yes. I do not know if you recollect, Mr. Barshay, but I know that Judge Talley will, in the Becker case it was notorious that all of the members of the jury who were sworn admitted having formed impressions concerning publicity in regard to Charles Becker's activities as head of the vice squad, but that had no bearing upon the issues. It did not constitute error. That is only one case, but I call attention to it so you will understand the way that I have been trying to work out a conclusion as to my duties.

Mr. Barshay: We do not coincide.

Mr. Cuff: Judge, isn't that the fact that is what convicted him? It was just that impression that convicted Becker.

The Court: I am talking about the legal aspects. I have my own notion of that case.

Is the juror satisfactory?

Mr. Climenko: No, your Honor. May we be indulged for a moment?

The Court: What about the prosecution?

[fol. 266] Mr. Turkus: The defense have not finished their questioning.

The Court: I understood they had.

Mr. Rosenthal: That was only on the challenge.

By Mr. Rosenthal:

Q. Mr. Hamilton——

A. Yes, sir.

Q. —you said that you had read an article in the paper which created an unfavorable impression on your mind; is that correct?

A. That is right.

Q. You told us also that you could, in the ordinary case, sit as an impartial jurymen and take the law from the Court and determine the facts as they apply to the law as given; isn't that right?

A. That is right.

Q. You have also told us that because of the article that you read you formed an impression at this time which is detrimental to one of the men on trial. That is correct?

A. Just as to his character.

Q. Yes, as to his character?

A. That is right.

Q. Of course, under our rules of law, you understand that a defendant may or may not take the stand, as he sees fit?

A. That is right.

Q. If he does take the stand he raises all issues concerning his character, you understand that?

A. That is right.

Q. From the answers you have given. But he may also——

Mr. Turkus: That is not the law.

Mr. Rosenthal: The character is not in issue if he does [fol. 267] not take the stand is not the law?

Mr. Turkus: Character evidence is only put in issue in one way. What is the use of mentioning it?

Mr. Rosenthal: I said his character is not put in issue if he does not take the stand.

Mr. Turkus: Judge, I must appeal to the Court to be the exclusive judge of the law. I do not want any jurors to have a misguided——

The Court: Cannot character be put in issue by character witnesses without the defendant taking the stand?

Mr. Rosenthal: Through the defense.

The Court: If the defendant takes the stand, it is credibility, not character. His credibility becomes a question. That does not rate character. The mere putting the defendant on the stand, that does not open the door for the prosecution to prove bad character.

Mr. Rosenthal: It opens the door. Well, we won't discuss the question of what it opens the door to or not at this time.

The Court: It raises only the question of credibility, not of character.

Mr. Rosenthal: I used the word character because Mr. Barshay and Mr. Turkus both used it. Credibility would be the better word.

Q. The issue of a man's credibility is raised when he [fol. 268] takes the stand. Is that clear to you?

A. Yes.

Q. But you understand also, the Court will undoubtedly charge you, that if he does not take the stand, that that fact cannot be used against him. Do you understand that?

A. Yes.

Q. At the present time you have an adverse feeling towards the character of one of the individuals on trial; is that right?

A. That is right.

Q. Assuming, Mr. Hamilton, that you had read nothing and knew nothing about any individual that is on trial here—— Let me withdraw it and put it this way: In the ordinary case, if you knew nothing about the individuals or the case, there would not be any question but what you could sit as a fair and impartial jurymen without any prejudice against the individual on trial; is that right?

A. That is right.

Q. But in this particular case you have a prejudice created by what you read and what you believed when you read it as to the character of one of the men; is that right?

A. That is right.

Q. Isn't it true, Mr. Hamilton, because of that prejudice that exists in your mind in this particular case that would not exist in your mind had you read nothing, that it would either require a greater amount of evidence on the part of that defendant or a lesser amount of evidence on the part of The People to produce in order for you to be convinced as to the guilt or innocence of that particular defendant? Isn't that true?

A. No.

[fol. 269] Q. You say that irrespective of the prejudice that you have against the one man, that you would not require any greater amount of evidence?

A. That is right.

Q. Or any lesser amount from The People, is that right?

A. Yes.

Q. But you said to Mr. Barshay that you reserved that prejudice or impression until the question of his character came into issue; didn't you say that?

A. That is right.

Q. Reserving that prejudice until his character came into issue, did you mean by that that if some people came on the stand, witnesses for The People, and made detrimental statements to this man as to his character, that that would lend greater weight because of the fact that you read the Mirror article?

A. As to his character?

Q. Yes?

A. Yes.

Q. In other words, because of what you read in The Mirror as to his character, if anybody got on the stand as The People's witness and accused him or said things detrimental to his character, it would have a greater weight because of what you have read? Is that what you just said?

A. Purely in that one line.

Mr. Rosenthal: I challenge him.

Mr. Climenko: Join in the challenge.

The Court: Try the challenge.

(The talesman was again sworn.)

[fol. 270] By Mr. Rosenthal:

Q. Mr. Hamilton, before you were sworn I ask you questions directed to whether or not, having read this Mirror article and certain things that were in it, your opinion would be as you phrased it before being sworn. Do you recall the question and the answer?

A. Yes.

Q. Now that you are under oath you reiterate the same answer with the same force and effect as if I asked you the question and you gave the answer; is that right?

A. I would.

Mr. Rosenthal: That is all.

The Court: Any other counsel for defense?

Mr. Barshay: We all join in.

The Court: Anybody else wish to question the witness?

(No response.)

By the Court.

Q. You understand, Mr. Witness, that whether a man has a good character or a bad character, he is entitled to a fair trial on a specific allegation?

A. Yes.

Q. No matter how good he may be or how bad he may be, he is entitled to an absolutely fair trial when he is charged with doing a specific thing?

A. That is right.

Q. Are you willing to give it here?

A. Yes, sir.

Q. Do you understand that a man's character, when tried on a specific allegation or charge, does not come in issue unless he puts good reputation witnesses on the stand?

A. I see.

[fol. 271] Q. Who testify that he has good character, then and then only does his character come in issue.

A. Yes.

Q. Are you willing, in that event, in this case, if sworn as a juror, to completely set aside any impression you may have from what you have read?

A. On character alone.

Q. On character alone?

A. Yes, sir.

Q. Are you sure that you can?

Mr. Rosenthal: May I object to the Court's question.

The Court: Overruled.

Mr. Rosenthal: Exception.

Q. Are you sure that you can?

A. Yes, sir, I am sure.

Mr. Barshay: We have no other questions.

Mr. Turkus: Neither have I.

The Court: The challenge is overruled.

Mr. Barshay: We all take an exception, your Honor.

Mr. Turkus: Satisfactory.

Mr. Talley: Challenged peremptorily by the defense, in which all counsel join.

(JOHN J. MALONEY, of 3214 Clarendon Road, was then [fol. 272] examined as to his qualifications.)

By Mr. Turkus:

Q. Mr. Maloney, the trestle board lists your address as Clarendon Road, is that correct?

A. That is correct.

Q. That is Flatbush, isn't it?

A. That is right.

Q. Have you lived in Flatbush a number of years?

A. Oh, I would say about twelve.

By the Court:

Q. You are East 32nd Street and Clarendon Road?

A. On the corner of New York Avenue.

Q. One block from the waterworks?

A. That is correct.

Q. Is Marshall Covert a friend of yours?

A. No, I don't believe I know him.

Q. He lives on your block. He is a newspaper man.

By Mr. Turkus:

Q. I was at the point, Mr. Maloney, of interrogating as to whether you have any business or other contacts in the Brownsville or East New York area of Brooklyn.

A. I have not.

Q. Did you at any time in your experience have any such contacts?

A. No, sir.

Q. Does the same apply to the garment district in Manhattan? Do you have any connections there of any kind, nature, or description?

A. No, I have not.

Q. Have you had any in the past?

A. No, sir.

Q. Does that apply to the clothing district of Manhattan? [fol. 273] A. That is right.

Q. And to the Brooklyn Waterfront as well?

A. That is right.

Q. So that there is nothing by way of social or business contact or connection that brought you in contact with any individuals or firms in any of those areas or industries that I enumerated?

A. No, sir.

Q. Does that hold true with respect to the clothing truckers?

A. Yes, sir.

Q. According to the trestle board your profession or occupation is listed as that of a cashier.

A. That is right.

Q. I take it you handle money on the inside, somewhere in an office?

A. Money and securities.

Q. Through any of your business contacts have you come in connection with or in any wise associated with any official of the Amalgamated Clothing Workers of America?

A. I have not.

Q. No social contacts with any of those?

A. None whatever.

Q. The names of Potofsky, Weinstein, and Katz, officials of that union, familiar to you in any way?

A. I never heard of them.

Q. I assume, then, that you have no contact with any officials in Local 240 of the Clothing Drivers & Helpers Union?

A. No.

Q. Or with Local 138 of the Flour Truckmens Union?

A. No, sir.

Q. Has the name Bruno Belia any significance to you?

A. None whatsoever.

[fol. 274] Q. That of Salvatore Marazzano?

A. No.

Q. Or Philip Orlofsky, one-time manager of the Cutters Local No. 4, associated with the Amalgamated?

A. No, sir.

Q. The name of Abraham Beckerman?

A. No, sir.

Q. Or William Alberts or Willie Alberts, one-time bondsman?

A. No.

Q. The name of Emanuel Buchalter have any significance?

A. No, sir.

Q. Or Philip or Phillie Buchlater or Kowas? The name of Weiss, associated with some automobile rentals?

A. No, sir.

Q. The name of Bellanca or Tosca at all familiar?

A. No.

Q. You have no contacts by way of business or any wise with any of the unions or the locals that I have read off to you?

A. No, sir.

By the Court:

Q. What is your concern?

A. Thompson & McKinnon.

By Mr. Turkus:

Q. Have you heretofore served as a juror?

A. Never.

Q. You have never had the benefit of listening to a judge's instruction on the law, either in a civil or criminal case?

A. No, sir.

Q. If selected as a juror in this case, will you take the law that applies to the case exclusively from the Judge?

A. I would.

Q. Are you in sympathy with law enforcement?

A. Yes, I am.

[fol. 275] Q. Do you know the District Attorney of the county, Judge O'Dwyer, or any member of his staff?

A. No, sir.

Q. Specifically, do you know Assistant District Attorneys Turkus, Klein or Joseph or any of them?

A. No, I do not.

Q. The defendants on trial are represented here by nine lawyers, three apiece. Do you know Mr. Barshay, Mr. Wegman, or Mr. Climenko?

A. I met Mr. Barshay about fifteen or sixteen years ago, but I never saw him again until I recently came into court.

Q. Was that meeting him at a social function?

A. I was introduced to him. It was with regard to a case.

Q. Was that in the District Attorney's office?

A. No.

Q. Did you meet him at his office?

A. No, I met him at a political club.

By the Court:

Q. In Williamsburgh?

A. Yes, sir.

Q. He was the Assemblyman there then?

A. I did not live there at that time. My mother lived down there shortly after I was married.

Q. Where did your mother live?

A. South Third Street.

By Mr. Turkus:

Q. Was it in connection with some case that Mr. Barshay was handling as counsel?

A. Yes, it was.

Q. Was it for some member of the family?

A. He was not acting as counsel for the member of my family.

[fol. 276] Q. Was it against some member of your family?

A. That is right.

Q. Would there be anything about that relationship that would prejudice you against his cause or against his client?

A. None whatsoever.

Q. And there would be nothing that would prejudice The People of the State of New York or its cause?

A. I beg pardon?

Q. I say, nothing in regard to that relationship which would prejudice The People of the State of New York or the prosecutor?

A. No.

Q. In other words, that would not have any effect one way or the other in your deliberations upon the guilt or innocence of the defendants at the bar of justice?

A. No, sir, it would not.

Q. You know none of the lawyers that represent the defendant Buchalter; you know neither Wegman, Climenko, nor Barshay except as you outlined to us? Do you know former Judge Tailey, or former Assistant District Attorney Cuff?

A. No, sir.

Q. Or former United States Assistant District Attorney Murray Kriendler representing the defendant Weiss?

A. No, sir.

Q. Do you know anybody in their respective offices or associated with them?

A. No, sir.

Q. With respect to defendant Capone, do you know Mr. Sidney Rosenthal or Mr. Fischbein or Mr. Rosenberg?

A. No, sir.

Q. Anyone in the office of any of those gentlemen?
[fol. 277] A. I do not.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. No, sir.

Q. Is the name of William W. Kleinman familiar to you?

A. No.

Q. Or that of David Price?

A. No.

Q. Or Saul Price, the former Assistant District Attorney in Manhattan?

A. No.

Q. When the Judge charges you on the law, will you give the defendant the benefit of the presumption of innocence in consonance with the Court's direction?

A. I would.

Q. And will you enforce the doctrine of reasonable doubt in consonance with the Judge's instruction on the law?

A. Yes.

Q. In regard to reasonable doubt. Have you any bias or prejudice against the prosecutor of this county, Judge O'Dwyer, or against the prosecution for employing the use of accomplice testimony, that is, employing the testi-

mony of one who participated in the commission of the crime with the defendants, against them on trial?

A. No.

Q. As to the creditability to be given to such type of witness, will you take the instructions from the Court as to the test to be applied? You won't close your ears to accomplice testimony, will you?

A. No.

Q. And there is no bias or prejudice against the prosecutor or against the prosecution which employs that type of testimony?

[fol. 278] A. No.

Q. Mr. Maloney, did you know the former District Attorney of the county personally?

A. I did not.

Q. Or any member of his staff?

A. No.

Q. Outside of Mr. Barshay?

A. Outside of Mr. Barshay.

Q. In the event that any of the defendants invoke a defense, for example, a defense of alibi, will you take the law exclusively from Judge Taylor as to the law of alibi?

A. Yes, sir.

Q. If selected as a juror in the case, will you listen to reasonable argument and discussion in the jury-room from your fellow jurors?

A. I would.

Q. If selected as a juror, will you conscientiously endeavor to arrive at a just, true verdict in the case?

A. Yes, sir.

Q. Is there anything about the nature of the charge, namely, a charge of murder in the first degree, which would prevent you from rendering a just verdict?

A. No.

Q. Have you any scruple, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Would you permit the question of punishment to enter into your deliberations?

A. No.

Q. If, after you have heard all the evidence in the case and you have heard the various lawyers for the defendants sum up to the jury and draw the inferences that they draw from the testimony and you hear the prosecutor draw

his inferences and then the learned Court charges you on [fol. 279] the law and you have discussed the case with your fellow jurors sensibly and reasonably in the jury room, and you come to the conclusion beyond a reasonable doubt that there are three guilty men at the bar of justice, would you hesitate to say so in your verdict?

A. No.

Q. Would you have the slightest hesitation or fear in so saying in your verdict?

A. No.

Q. Is there any reason concerning which I have made no inquiry which would prevent you from rendering a verdict in consonance with justice?

A. No.

By Mr. Climenko:

Q. Mr. Maloney, you would not have any fear of expressing a verdict of "Not guilty" if you entertained a doubt of the guilt of any of the defendants, would you?

A. I would not.

Q. Have you read about this case?

A. Yes, a little.

Q. In what papers, if I may ask?

A. Well, the only papers I read are the *World-Telegram* and the morning *Times*.

Q. Because of your reading articles in those papers, have you formed an opinion as to the innocence or guilt of any of the defendants in this case?

A. Well, I don't know that I would call it an opinion. I have some sort of an impression.

Q. I am afraid that whatever distinction there may be between the word "impression" and "opinion" is one that you will have to define for me. Will you tell me how you distinguish between those two words?

A. Well, I would say that the thought in my mind is not [fol. 280] a very definite one, although I have some ideas, or I should say thoughts, in that regard.

Q. You presently have some ideas, thoughts, or impressions which are the result of your reading, and those ideas, impressions, and thoughts are adverse to one or more or the other of the defendants; is that correct?

A. Yes, I would say so.

Q. And as you sit here now as we discuss this matter, those ideas or impressions or thoughts exist in your mind?

A. Yes.

Q. And they relate to the innocence or guilt of one or the other or more than one of the defendants; is that right?

A. That is correct.

Q. Thinking about it as objectively as you can think about the operations of your own mind, do you feel that it would require affirmative evidence to be produced by the defendants to dispel those notions?

A. Well, it would require pretty conclusive evidence, I would say.

Q. You mean that that evidence, in order to correct and balance your mind on the question of innocence or guilt, would be evidence that you would require to be produced by or on behalf of the defendants or one of them?

A. Yes, I would say so.

Q. Is that correct?

A. I would say so.

Mr. Climenko: If your Honor pleases, I challenge this gentleman for cause.

The Court: Try the challenge.

JOHN J. MALONEY, of 3214 Clarendon Road, Brooklyn, New York, being duly sworn, testified as follows:

[fol. 281] By Mr. Climenko:

Q. Mr. Maloney, I have just asked you about the operation of your mind in consequence of literature, newspaper literature, that you read about one or more of these defendants. Now that you have been sworn, were I to repeat those questions would your answers be the same?

A. Yes, they would.

Mr. Climenko: I press the challenge, if your Honor pleases.

Mr. Talley: In behalf of all defendants.

Mr. Cuff: I join in it.

Mr. Turkus: May I proceed?

The Court: Yes.

By Mr. Turkus:

Q. Mr. Maloney, I think that when we discussed the matter in advance of the defense lawyers, you said you had never served as a juror before.

A. That is correct.

Q. So that if this were your case and you were in the jury box and you would listen to a charge on the law from the Judge for the first time? Do you find any fault with our American principle that the prosecutor must find a defendant guilty beyond a reasonable doubt? Do you find any fault with the principle that defendants are presumed to be innocent as they are seated in the court-room?

A. No, I would not say I do.

Q. Would you find any fault with the principle of law if the Judge were to tell you that as a member of the jury, [fol. 282] that a defendant has no burden, that he need produce no evidence at all? Would you find any fault with that instruction of law?

A. Will you repeat that?

Q. Would you find any fault with the instruction of law that the Judge will give you, that the defendant has no burden in a criminal case, and would you follow that instruction of law?

A. I believe I would.

Q. And if the Judge should instruct you on the law that a defendant may or may not take the stand, and if he does not, no unfavorable inference may be drawn against him, would you find any fault with the Judge for telling you that that was the law?

A. No.

Q. Do you find any fault with that instruction of law?

A. No.

Q. Would you follow it if the Judge told you that was the law?

A. Yes, I would.

Q. By the same token, do you understand that the prosecutor of this county comes before a jury and asks for a verdict of guilty upon evidence that he produces in the court-room? Do you understand that?

A. Yes.

Q. You would not expect that part of the proof to come from a newspaper, would you?

A. No.

Q. You would expect the prosecutor to bring the proof into the court-room and satisfy your mind and the rest of the jury beyond a reasonable doubt that there are three [fol. 283] guilty men at the bar of justice before you vote "Guilty"; isn't that right?

A. Yes.

Q. And you would find no fault with that proposition of law or that instruction of law; is that correct?

A. Correct.

Q. Can't you now take your place in the jury box and, devoid of any newspapers that you may have read, because that is not under oath, it does not supply proof, can't you sit down and listen to this case, use common sense and judgment, and decide this case on the evidence that you hear in the court-room?

Mr. Climenko: I object to the form of the question, if your Honor pleases.

The Court: Overruled.

Mr. Climenko: Exception.

Mr. Talley: Exception to the defendant Weiss.

By Mr. Turkus:

Q. Can't you use common sense and judgment?

By the Court:

Q. Decide the case on the evidence?

A. Well, yes, I think I could.

Q. You applied for excuse, didn't you?

A. Yes.

Q. I said no, and you are hoping to get off?

A. I won't be sorry if I do.

Q. The only papers you read are the *Times* and the *Telegram*?

A. Yes.

Q. And neither one of them has expressed an opinion. [fol. 284] Do you know where this is alleged to have occurred?

A. I believe in the Brownsville section.

Mr. Cuff: We are interested in the answers.

Q. Did you read and did you remember the address where the alleged crime is alleged to have been committed?

A. The street, I believe, was Sutter Avenue.

Q. You heard that mentioned here, didn't you?

A. I heard it mentioned here. I did remember it from the newspaper as well.

Q. Did you read anywhere in either the *World-Telegram* or in the *New York Times* that any of these defendants are, in the opinion of that newspaper, guilty?

A. No, sir.

Q. Did the *World-Telegram* or did the *New York Times*, according to your recollection, state any evidence against these defendants of this particular crime which would entitle you to form a belief as to whether they are guilty or not?

A. No.

Mr. Barshay: I object to the form of your Honor's question.

The Court: Overruled.

Mr. Barshay: Exception.

The Court: He has already answered. He said "No."

Q. Isn't it a fact you are trying to get off from the jury and so you are professing a prejudice for that purpose?

A. No, your Honor.

Mr. Climenko: I object to your Honor's question.

The Court: Overruled.

[fol. 285] Mr. Climenko: Exception.

Q. Is it a fact, when you read the Telegram and the Times that you prefer those papers because your Company carries ads in those papers?

A. No, we don't advertise.

Q. Is it a fact the first page you turn to is the stock report?

A. No, I don't believe so.

Q. Baseball?

A. Generally baseball.

Q. And then stock reports?

A. That is correct.

Q. And if you see anything on the subject of crime, it is a matter of minor interest?

Mr. Barshay: I object to the form of your Honor's question.

The Court: Overruled.

Mr. Barshay: Exception.

Mr. Talley: Exception to us.

A. As a general rule I read the front page, then after that the sporting page, and then the financial question.

Q. Do you recall at any time when either the *Times* or *Telegram* carried this case on the first page?

A. I don't recall.

The Court: Go ahead with your questioning.

(To the talesman): I think you are trying to get off.

By Mr. Turkus:

Q. Mr. Maloney, the only way that we can decide qualification to sit on the jury and to decide a case with justice [fol. 286] is to ask questions to elicit the state of mind of the prospective juror. I want to ask you very frankly, do you think you can sit in this jury and decide the guilt or innocence of the defendants at the bar of justice on the evidence that you hear in the court-room?

A. Yes, I think I could.

Q. And if selected as a juror, will you lay aside any impression you may have gathered from reading of press-reports, and decide that issue, of importance to The People of the State and, of course, to the defendants, upon the evidence that you hear in the court-room?

A. I would try my best to.

Q. Is there anything that would impair or impede your ability to decide a case on evidence?

A. I don't think so.

Q. Could you, in consonance with your oath of office which you take as a juror, render a just verdict on the evidence in the case?

A. Yes, I think I could.

Mr. Barshay: May the record show that the juror hesitated at least a half a minute before he answered that question?

The Court: I did not time him.

Mr. Barshay: That is my best impression.

Q. There seems to be some question in the mind of the Court and the defense lawyer as to the amount of time that elapsed before my question was finished and you gave your answer. Is there some doubt in your mind as to your ability to sit here as a juror, obey your oath of office, and [fol. 287] render a just verdict in consonance with the evidence?

A. As I said before, I had formed some impression. It would require a little effort for me to set that aside.

The Court: And all the time you were sitting as foreman you would be thinking of Thomson & McKinnon is that [fol. 288] correct?

Mr. Barshay: I sustain it. I thought I was doing you a favor. Excused.

Mr. Talley: I was going to take an exception to your Honor's examination and observations, but in view of your ruling he is excused, I must withhold my exception.

The Court: I do not think he would make a good juror. I am going to sustain the challenge. I do not think his mind would be on the job.

Mr. Talley: I take exception, with great respect, to your Honor's observation as to this juror on the ground——

The Court: I withdraw it. I say he would make a good juror; his mind would be on the case; but I will sustain the challenge, and you can guess as to the reason.

Mr. Talley: I object to your Honor's observations, because they may have a prejudicial effect on the talesmen who have not yet been called and have not been examined and who, in view of your Honor's remarks as to this talesman, may hesitate to express fully what is in their minds, and I respectfully except to your Honor's examination and your Honor's observation in regard to John J. Maloney, the last talesman called and examined.

Mr. Barshay: That is an exception as to all defendants, your Honor.

[fol. 289] The Court: Do you want to continue?

Mr. Cuff: No use starting with another man now. We have only five minutes.

The Court: We will continue at ten o'clock tomorrow morning, and I trust there will be nothing to prevent the session of the court starting promptly.

The defendants are remanded, and the jurymen are cautioned not to read anything concerning the case and not to listen on the radio, not to talk to anybody about it.

(An adjournment was thereupon taken to September 19, 1941, at ten o'clock a. m.)

Trial Resumed

The Court: Proceed. Case on trial.

(ALFRED M. SILVERMAN, of 150 East 19th Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.)

By Mr. Turkus:

Q. Mr. Silverman, do you live in the Flatbush section of Brooklyn?

A. That is right.

Q. And have you lived in Brooklyn for a number of years?

A. About six years.

Q. Your business is listed as Ins. I imagine that means insurance.

A. That is right.

Q. Are you in business for yourself, Mr. Silverman?

A. No, I am with the Aetna Casualty & Surety Company.

Q. In their office?

A. That is right.

Q. Does your work bring you outside?

A. It does.

Q. Do you handle all types of insurance?

A. Principally casualty insurance.

Q. Does business bring you into the garment district of Manhattan?

A. No.

Q. Clothing district?

A. No.

Q. Brooklyn waterfront?

A. No.

[fol. 291] Q. Brownsville-East New York section of Brooklyn?

A. Yes.

Q. Frequently?

A. I am there on an average of once or twice a week.

Q. On business?

A. That is right.

Q. Have you any social contacts there too?

A. No.

Q. Are you intimate or friendly with those clients that you have in that Brownsville-East New York area?

A. I only see them on business. May see one person now and never see them again.

Q. Is that in reference to some claim?

A. That is right.

Q. In which you represent the company?

A. That is right.

Q. Have you been going to the Brownsville-East New York section for the past four years?

A. Yes.

Q. While you were there did you hear anything of the Rosen case in 1936?

A. I recall reading about it when it happened, just at the time it happened.

Q. Was the case discussed in your presence?

A. No.

Q. Since you received notice to serve on the jury or prospective jurymen in this case, did anybody discuss the case with you?

A. No.

Q. Have you heretofore had prior jury service?

A. Not in this state.

Q. Some state?

A. Pennsylvania.

Q. Was it in a criminal case?

A. I never got on.

Q. You got as far—

A. I was called but never served on a jury.

[fol. 292] Q. Have you had any service in a civil case?

A. No.

Q. If accepted as a juror in this case, will you take the law exclusively from the trial judge?

A. I will.

Q. Are you in sympathy with law enforcement?

A. I am.

Q. Did business ever bring you in any of those districts or in contact with any of the industries that I enumerated?

A. No.

Q. Do you have any business of any kind, directly or indirectly, with the Amalgamated Clothing Workers of America?

A. No.

Q. Is the name of Samuel Katz or Sam Katz familiar?

A. No.

Q. Or that of Murray Weinstein?

A. No.

Q. Is there any familiarity in the name of Bruno Belia, an organizer for the Amalgamated?

A. No.

Q. Or the name of Salvatore Marazzano?

A. No.

Q. Do you have any business with anybody in the clothing trucking industry?

A. No.

Q. Do you know any official of Local 240 of the Clothing Drivers and Helpers Union?

A. No.

Q. Is the name of Philip Orlofsky, a one-time manager of the Amalgamated, familiar?

A. No.

Q. Does business bring you into any contact, directly or indirectly, with the Flour Truckmens Union?

A. No.

Q. Is the name of Max Silverman familiar to you in any way?

[fol. 293] A. I have heard the name.

Q. Is that something that you have read?

A. I think so.

Q. Is the name of Wolfie Goldis familiar?

A. Yes.

Q. Is that by way of reading in the press?

A. That is right.

Q. Have you followed any of the articles in connection with Judge O'Dwyer's investigation with any degree of interest?

A. No.

Q. Is the name of Willie or William Alberts, a bondsman, familiar?

A. No.

Q. I take it you have no connection, directly or indirectly, with any flour truckmen?

A. None at all.

Q. Is the name of Emanuel Buchalter familiar?

A. No.

Q. Or that of Philip Buchalter or Phillie Kowas?

A. No.

Q. The names of Bellanca or Tosca familiar?

A. No.

Q. Do you know anybody in the knee-pants business?

A. No.

Q. Or in clothing industry at all?

A. No.

Q. Manufacture or distribution of clothes?

A. None at all.

Q. There are nine lawyers here representing these defendants at the bar: Mr. Barshay, a former Assistant District Attorney in this county, Mr. Abraham Wegman, and Mr. Jesse Climenko. They represent the defendant Buchalter. Do you know any of the three?

A. No, I don't.

Q. Or anyone associated in their law offices?

A. Not that I know of.

Q. The defendant Weiss is represented by former General Sessions Judge Talley, former Assistant District Attorney Cuff, and former United States Assistant District Attorney Kriendler. Do you know any of those three?

A. I do not.

Q. Or any member of their office force or staff?

A. No.

Q. Mr. Capone, the third defendant, is represented by Mr. Sidney Rosenthal, Mr. Fischbein, and Mr. Rosenberg. Do you know any of those three?

A. I do not.

Q. Or any members of their staff?

A. No.

Q. If selected as a jurymen in the case, I think you told me you would take the law exclusively from the Court in all respects, that is, from Judge Taylor presiding at the trial. Is that correct?

A. That is right.

Q. Will you give to the defendants the presumption of innocence and apply the doctrine of reasonable doubt as instructed by the Judge?

A. I will.

Q. Do you have any bias against the District Attorney of the County or any bias against a prosecution which takes people who are implicated in the crime and uses them in court as witnesses to testify against defendants in the case?

A. No.

Q. Will you listen to that type of testimony?

A. I will.

Q. Will you apply tests as given by the Judge, that should be applied to the credibility of that type of witness?

A. Yes.

Q. As to what corroboration or supporting testimony is required, will you take the law from the Judge in that respect.

A. Yes.

Q. You won't close your ears, will you, to any testimony [fol. 295] of a co-conspirator or an accomplice in the killing, will you?

A. No.

Q. Do you know any of the former Assistant District Attorneys who were attached to the office of Mr. Geoghan when he was District Attorney of the county?

A. I think I knew Mr. Madden before he was ever District Attorney, but during the time he was District Attorney I never met or talked to him.

Q. Did you know Mr. Geoghan personally?

A. No.

Q. At any time that you knew Mr. Madden did you discuss the Rosen case with him?

A. I have not seen him since that happened.

Q. Was your meeting with him through your connection in the insurance business?

A. That is right. He worked for the same firm.

By the Court:

Q. How long have you been in that business?

A. Twenty-six years.

Q. What is your firm?

A. Aetna Casualty & Surety Company.

Q. All that time?

A. Most of it.

Q. You live on East 19th Street between Albemarle and Beverly?

A. That is right.

Q. Is that nearer Beverly?

A. Yes.

Q. Is it opposite the church?

A. The church is on the corner; I am about almost half way up the block.

Q. There are apartment houses on that block?

A. Yes, sir.

[fol. 296] Q. You never lived on Tennis Court at the foot of East 19th?

A. No.

Q. Do you know Judge Healy?

A. No, I don't.

By Mr. Turkus:

Q. Mr. Silverman, do you know any member of the bar who tries criminal cases as a specialty?

A. No, sir.

Q. Is the name of William W. Kleinman familiar?

A. I have heard the name.

By the Court:

Q. I will ask one more question just to clarify the previous question. I asked you that because I knew a man named Silverman had lived in the same house with Judge Healy on Tennis Court, at the foot of that street. That is a block and a half from where you live?

A. That is right.

Q. Do you know this Silverman?

A. I don't think so.

Q. He is rather stouter than you and he belongs to the Elks.

A. I don't know him.

By Mr. Turkus:

Q. Do you know of any reason concerning which as yet I have made no inquiry, which would affect your ability to serve as a juror in the case?

A. No.

Q. Do you sit in the jury box now with an open mind on the case?

A. I do.

Q. Have you read any of the articles concerning the investigation conducted by Judge O'Dwyer?

A. No.

[fol. 297] Q. You have read nothing in the press whatsoever?

A. I have read headlines. I have never gone deeply into it.

Q. You have read nothing in the Rosen case that persists in your mind?

A. Nothing. I recall of it at the time it happened, little sketches about it now and then, nothing particular.

Q. While you were in the Brownsville-East New York area on business, did anybody discuss the Rosen case with you?

A. Never heard it discussed at all.

Q. And it was never discussed in your presence?

A. No.

Q. In the event that any defense is raised in the case by one or more of the defendants, for example, a defense of alibi, will you take the law exclusively from the trial judge with regard to such a defense?

A. I will.

Q. You say you have no prejudice against the prosecutor or against the prosecution which employs the use of accomplice testimony?

A. No.

Q. As you sit in the jury box now, have you any prejudice against any of the defendants in the case?

A. None at all.

Q. Is there anything about the nature of the charge, namely, a charge of murder in the first degree, which would impair or preclude you from serving as a juror.

A. I think not.

Q. Have you any scruple, conscientious or otherwise, against capital punishment?

A. No.

Q. In your business experience has there been any discussion about Judge O'Dwyer's investigation?

A. No.

Q. You have engaged in no lengthy discussions with anyone about it?

A. I never discussed it.

Q. Never discussed it at all? And you read very little?

A. That is right.

Q. And the reading has been limited to headlines?

A. Mostly. I have read some of the articles I have seen in the paper.

Q. If selected as a juror in the case, will you listen to fair argument from the other jurors?

A. I will.

Q. Discuss the case without rancor and bitterness in the jury room?

A. Yes, sir.

Q. Use common sense and reason in applying yourself to the one issue in the case, the guilt or innocence of the defendants?

A. I will.

Q. If selected as a juror, will you endeavor to reach a just and true verdict in consonance with the evidence?

A. I will.

Q. Assuming that you have heard all the evidence in the case and you have listened to the defense lawyers draw their inferences from the testimony, and then the District Attorney draw his inferences, and you have had the benefit of the learned charge of the Court on the law, and you discuss the case with reason and common sense with the other jurors, and then you, Mr. Silverman, are satisfied beyond a reasonable doubt that there are three guilty men [fol 299] at the bar of justice, will you hesitate to say so with your verdict?

A. No.

Q. Would you have any fear or reluctance in so doing?

A. No.

Q. Is there anything about your business connections which would in any wise impair your service on the jury?

A. No.

Q. In the event that the trial is protracted, are business conditions such with you that you can devote your mind exclusively to the issue of the case?

A. Yes, sir.

By Mr. Climenko:

Q. Mr. Silverman, I did not quite understand what you said, if you did any, your duties were with the insurance company.

A. I am a claim adjuster.

Q. Does that mean that in the course of your duties you yourself investigate crimes?

A. That is right.

Q. Consult with attorneys about them?

A. Yes, sir.

Q. And you have been doing that for some time?

A. Twenty-six years.

Q. Any particular type of crime that you specialize in the investigation of?

A. Liability claims.

Q. Does that mean negligence in the operation of motor vehicles?

A. No, that is in connection with accidents in buildings and on the streets, public accidents.

Q. The maintenance of real property?

A. That is right.

Q. And not with automobile liability?

A. None at all.

Q. You specialize only in this real estate liability business, then, is that right?

A. If that is what you call it. It is called public liability, [fol. 300] has to do with accidents in buildings, apartments, stores.

Q. I do not pretend to know the right name for it. I am just trying to get the subject that you do deal with. That is it—real estate?

A. That is right.

Q. In the course of your duties you consult with lawyers?

A. I do.

Q. In consequence of those discussions, you know many lawyers, don't you?

A. I know a lot of negligence lawyers.

Q. Those discussions have never brought you into communication with lawyers who have discussed this case with you?

A. Most of the lawyers I met do not know anything about criminal law.

Q. You have read about this case?

A. Off and on.

Q. Is that correct?

A. That is right.

Q. In what newspapers?

A. I generally read the *News* in the morning and the *Post* in the evening.

Q. Have you read about any of the defendants in those newspapers?

A. I think I have.

Q. In consequence of your reading about them, have you formed any opinion about the defendants?

A. No.

Q. When I say "opinion," have you formed any opinion with respect to their alleged guilt or their innocence in this case?

A. No.

Q. None whatsoever?

A. No.

[fol. 301] Q. When is the last time that you read about any of these defendants?

A. I think about the time I was first called for jury duty.

Q. That is the first literature that you are conscious of right now relating to this case, that you read?

A. The first, did you say?

Q. The first newspaper articles that you read that you can remember about this case were at the time you were first called here?

A. I thought you said the last time.

Q. I beg your pardon. I am told that I did say last time. Is that the last time you read about it, was when you were first called here?

A. That is right.

Q. You have not read about it since?

A. No.

Q. And that was an article in the *News* or the *Post*?

A. I do not recall which paper—one or the other.

Q. You have also read from time to time about Mr. O'Dwyer, who is the District Attorney of Kings County; is that right?

A. Nothing particular. I may have seen his name in the paper. I do not recall what it had reference to.

Q. The fact that Mr. O'Dwyer—Mr. Turkus calls him Judge O'Dwyer when he refers to him—is the District Attorney of Kings County is not a factor which would affect your consideration of this case one way or the other, would it?

A. Absolutely not.

Q. The fact that at one time the District Attorney was a [fol. 302] Judge would not affect your consideration of the matter one way or the other, would it?

A. No, sir, it would not affect me.

Q. If you were charged as a part of the law by the Court that the mere bringing of an indictment, the lodging of an indictment against any defendant is in and of

itself no indication whatsoever of guilt, would you have any difficulty in following that law?

A. No, sir.

Q. Would you have any difficulty in following that law?

A. No, sir.

Q. In other words, you realize, when I translate that into practical language, that the mere fact that an accusation is made is no indication of guilt whatsoever. You understand that clearly, don't you?

A. I do.

Q. So that as you sit here now with your mind on this case, your assumption is that the defendants are innocent; is that correct?

A. That is right.

Q. And if you were sworn as a juror, that would be your attitude, that the defendants are assumed to be innocent?

A. That is right.

Q. Is that correct?

A. That is right.

Q. And then if the Court should charge you that as a matter of law the defendants are presumed to be innocent unless they are proved guilty beyond a reasonable doubt, you would have no hesitation in accepting that as law, would you?

A. No.

Q. And, translating that again into practical meaning, [fol. 303] you would have no hesitation in accepting the guidance of the Court on the proposition that you cannot arrive at a verdict of guilt unless beyond a reasonable doubt you are convinced of guilt? You understand that?

A. Yes.

Q. And you have no quarrel with that concept of law?

A. None at all.

Q. And you can understand that that is one of the fundamental principles that affects the trial of a case; isn't that correct?

A. Yes.

Q. Mr. Turkus has asked you about people who he says may be called as witnesses, who may have participated in the crime, and he has asked you whether or not you would believe them; is that correct?

A. That is right.

Q. You say that you would have no prejudice against the prosecution because such a witness was called by the prosecution?

A. Absolutely not.

Q. Assuming that is so, at the same time would you weigh the credibility of that witness, having in your mind at the time that you weigh it as one of the factors affecting his credibility the fact that he admitted the doing of such an act?

A. I would weigh the credibility of the witness.

Q. You would?

A. Yes.

Q. And, in weighing the credibility of any witness, would you give due regard to the admission, if such an admission were made, that that witness had on a prior occasion committed perjury?

A. I would consider who the man was.

Q. I beg pardon?

A. I would consider who the man was.

Q. Of course, we always consider who a man is and his identity, but I am saying more specifically: Assume that a man takes the stand in this case and he swears to tell the truth, and then after he has taken that oath he admits that in a prior proceeding, some other case, he also took the oath to tell the truth and now, today, he admits that on that former occasion he lied after he had taken that oath, would you consider that circumstance in affecting his credibility?

A. Certainly.

Q. Would you reject his testimony by reason of that circumstance, or would that circumstance have substantial weight with you in weighing the credibility of his testimony?

A. Your question is so long that I lost track of it.

Q. I withdraw it. Would the fact that a witness who takes the stand in this case, swears to tell the truth, admits that in some independent trial that has gone by he also took that oath, swore to tell the truth, and now admits for the first time that he did not tell the truth on that prior occasion, on the contrary, he tells you today that he lied on that prior occasion, if he made such an admission would that admission weigh heavily with you in assessing the credibility of that witness?

A. I think it would, yes.

Mr. Climenko: That is all.

[fol. 305] By Mr. Cuff:

Q. Mr. Silverman, do you read the *Mirror*?

A. No.

Q. And then, I gather, you have not read any of the articles referring to this case that have been published in the *Mirror*?

A. Never read any of them.

Q. Do you prepare cases for trial?

A. No.

Q. That you investigate?

A. No.

Q. You don't go to court for your company at all?

A. Only as a witness in some cases.

Q. Sometimes as a witness, to contradict statements made by parties whom you have interviewed; is that right?

A. That is right.

Q. And your office is where—151 William?

A. That is right.

Q. And how long have you been doing that type of work?

A. Twenty-six years.

Q. In New York City?

A. No, only the last seven years in New York. Prior to that in Pennsylvania.

Q. Are you assigned to a particular district in the investigation of these general liability cases?

A. Yes.

Q. That is the type of work that you specialize in; is it not?

A. That is right.

Q. And what district is your present assignment?

A. East New York, Brownsville, Coney Island, Brighton Beach.

Q. How long have you been assigned to the East New [fol. 306] York and Brownsville district?

A. Six years.

Q. During those six years have you read anything about the conditions there?

A. Yes.

Q. You know what I mean?

A. Oh, yes.

Q. And in what papers did you read these things?

A. Usually the *News* or the *Evening Post*.

Q. Did you read all of the articles in those two papers that you mention about the Rosen case after it occurred?

A. I don't read the articles in their entirety. I usually just glance at the headlines.

Q. Not particularly interested, is that it?

A. That is right.

Q. Did any of this reading, particularly while you were assigned and working in the Brownsville and East New York district, create any impression in your mind one way or the other about this case or any of these defendants?

A. No.

Q. Mr. Turkus asked you about the doctrine of reasonable doubt. I understand you have never served on a criminal case as a juror in a criminal case; is that right?

A. Never.

Q. And, of course, you have never heard the doctrine of reasonable doubt explained by any judge, have you?

A. No.

Q. And if the Court should instruct you that a reasonable doubt is something that exists, arising from the evidence or some omission in the evidence or in the prosecution's case, you would follow that instruction?

A. I would.

[fol. 307] Q. And you would not hesitate, would you, Mr. Silverman, if you found a reasonable doubt, to acquit?

A. I would not.

Q. And if you were convinced, after a careful study of the evidence, after considering the arguments of the lawyers and the charge of the Court, that there was a reasonable doubt, would you have the courage to say it by your verdict?

A. I would.

Q. And to maintain it?

A. I would.

Q. I understand that you say that your business will not cause you any uneasiness if you are here in a protracted trial; is that right?

A. As far as I know.

Q. And when you were questioned about giving the defendants the benefit of the presumption of innocence, do you know that that presumption must be given to the defendants throughout the entire trial and while you are deliberat-

ing and until you are satisfied of the guilt of the defendant or the defendants beyond a reasonable doubt?

A. I do.

Q. And if you are selected, will you give that presumption to these defendants during that time?

A. I will.

Q. Mr. Silverman, you realize, do you not, that each defendant is entitled to a separate verdict in this case?

A. I do.

Q. And you will consider carefully the evidence as it affects each defendant and only the evidence that affects that particular defendant?

A. I will.

Q. On the question of the testimony of an accomplice, [fol. 308] you appreciate such testimony must be weighed and considered with extreme care and caution?

A. I do.

Q. And if there is testimony of an accomplice or accomplices in this case, will you weigh it just that way?

A. I will.

Q. And if you find that that evidence is not corroborated, as the Court will instruct you, by other independent testimony that you believe and which tends to connect a defendant or the defendants with the crime, will you vote to acquit?

A. I will.

Q. Do you realize that if there is only testimony of accomplices that is not corroborated by some other testimony that tends to connect the defendant with the commission of the crime, that you must vote to acquit?

A. I know that as a matter of law.

Q. You have read that before, have you, and you have heard it discussed before?

A. Yes.

Q. Where did you find that out, in your discussions, lawyers?

A. By associating with lawyers, I guess.

Q. And if you are selected in this case, you will adhere to that, follow that rule of law as it will be instructed by the Court?

A. That is right.

Mr. Cuff: I think that is all.

By Mr. Rosenthal:

Q. Mr. Silverman, you understand that the reason why different lawyers are addressing you is that each represents [fol. 309] a separate person on trial here?

A. I can't hear you.

Q. I say, do you understand that the reason why three separate lawyers have questioned you is that each one represents a separate person on trial?

A. I understand.

Q. Nobody has asked you whether or not you have any relatives on the police force. Have you any such?

A. No.

Q. Have you any close friends among the police?

A. No.

Q. Do you know Captain Bals?

A. No.

Q. Or Lieutenant Osnato?

A. No.

Q. And to your knowledge at this time you have no close friend or relatives who are attached to the Police Department; is that correct?

A. None at all.

Q. Without trying to inquire into your private life, do you belong to any men's club or any synagogue?

A. No.

Q. Have you ever heard either Mr. Turkus or any of the members of Mr. O'Dwyer's staff speak at any place in reference to crime?

A. I have not.

Q. Have you ever read any articles purporting to relate to crime by any of the Assistant District Attorneys?

A. I think I read a little bit of an article in the *Journal* one time.

By the Court:

Q. Do you belong to Beth Emeth?

A. I do not.

Q. That has an active men's organization.

Mr. Rosenthal: I did not want to specify any specific organization.

[fol. 310] The Court: I know the organization. That is in the vicinity of where he lives.

Mr. Rosenthal: That is right, Church and Beverly, I think.

By Mr. Rosenthal:

Q. How long ago was it that you read this article, Mr. Silverman?

A. It must be six or seven months ago.

Q. And do you recall who was the sponsor of the article?

A. No.

Q. Was it in relation to any of the defendants who are on trial?

A. No.

Q. Did it make any impression of any character upon you either as to the guilt or innocence of any person?

A. None at all.

Q. You never sat on a jury before, although you have been called? Am I correct in that statement?

A. That is right.

Q. Have you ever been called on a Grand Jury or sat on a Grand Jury?

A. No.

Q. Of course, you realize that the defendants are brought here by an indictment which charges them with having committed a certain act. You realize that?

A. Yes, sir.

Q. The mere fact that they have been indicted, does that raise any presumption in your mind as to their guilt?

A. None at all.

Q. Having had experience in accident work, you know [fol. 311] that even if a man has a false claim, there is nothing to bar him from serving a summons and complaint on your assured and claiming something definitely untrue; isn't that so?

A. That is right.

Q. And the only method that you on behalf of the insured would have of disproving it would be by putting in an answer denying the claim, isn't that right?

A. That is right.

Q. Then the issue is tried before a jury?

A. That is right.

Q. That is the same method of procedure following an indictment. The minute the defendants plead not guilty, you understand that raises——

Mr. Turkus: Just a minute. That is not the same procedure, about the filing of any false claim.

Mr. Rosenthal: Let me withdraw it and put it this way:

Q. The method of disproving, or the method that the District Attorney must assume once a defendant pleads not guilty, you understand, is by proving to your satisfaction beyond a reasonable doubt all of the allegations which they have made against the defendant. You understand that?

A. I do.

Q. Do you further understand that although these three men are being tried together at your hands, each one is entitled really to a separate trial; do you understand that?

A. I do.

Q. You understand that you may find the three men guilty, two men, one man, or you may acquit all of them—that is your province?

A. Yes.

Q. Do you further understand if you are accepted as a [fol. 312] jurymen that it is your absolute duty to weigh each person's guilt, separate, distinct, and apart from the other persons' charged in the indictment? Do you realize that?

A. I do.

Q. Of course, the law you are going to take from the Court; is that correct?

A. That is right.

Q. Merely because the District Attorney may claim in this case that a man is not an accomplice, if the Court were to charge you as the law in the case that it is your province under certain conditions to determine for yourself as a fact his complicity, will you, merely because of the fact that the District Attorney says he is not, take his word for it, or will you deliberate in your own mind whether the person is an accomplice or not?

A. I will deliberate that in my own mind.

Q. Assuming that the Court were to charge you as the law that if the District Attorney relies upon the testimony of accomplices in determining the guilt of the individuals on trial, there must be other independent evidence tending to connect the individual before you can find a verdict of guilt—I say, assuming the Judge tells you that that is the law—would you without fear or favor currying the evidence to ascertain in your own mind whether you believe

there is any other independent evidence before you find a verdict of guilty?

A. I would.

Q. If the Court charges you that ten accomplices' testimony has no more probative weight than one in so far [fol. 313] as the question of independent evidence is concerned, would you follow that law?

A. I would.

Q. I want to make myself clear on that point. You may have an erroneous theory that one person, an accomplice admittedly, can corroborate or furnish the other evidence by another accomplice or more than one other accomplice. You have not any such theory at this time, have you, sir?

A. No.

Q. The law, if the Court charges it to you in this fashion, presumes that there must be other evidence other than one or more or a million accomplices, before you can convict anyone. Is that clear to you?

A. Yes.

Q. You have no fault to find with that law either, have you?

A. No.

Q. You further realize that there is not any one of these three men that are on trial for anything else in this court except for the things that are charged by the District Attorney in this indictment? You understand that?

A. I understand.

Q. You realize, sir, that if such were not the case it would be impossible for a lawyer to prepare a case, if he did not know what he was going to be charged with, that is, his client; is that true?

A. No.

Q. So that in determining the evidence here, you are going to determine, if you are one of the jurymen, what the District Attorney has proven against these men in this particular case, not what may be in your mind as to anything [fol. 314] else extraneous to the issue on trial; isn't that true, sir?

A. That is right.

Q. Mr. Turkus has asked you also, about the question of alibi, would you take the law from the Court, and you rightly answered that you would. That is true. Do you

realize that at no time does the defendant in a criminal case have to prove anything? Do you realize that?

A. I do.

Q. Do you realize that even if all of the defendants were to stand mute and were not to offer any testimony at all in this case, that it would still be the duty of the District Attorney to prove to your satisfaction beyond a reasonable doubt that they are guilty before you could find them guilty?

A. I understand.

Q. And you realize that if they stood mute, that you could not use that fact or argue about it in your juryroom?

A. Yes.

Q. That no unfavorable impression could be drawn through that? Do you feel, sir, that merely because one man charged with a crime may know or have had some association or admit that he knows one of the men who takes the witness stand as a witness, that that association alone, without other proof, is sufficient to raise a presumption in your mind of his guilt?

A. No.

Q. The point which I am trying to raise is this: There may be some witness called here whom the defendant may admit that he knew and had been in the company with at times, but whom he denies ever having had any nefarious [fol. 315] dealings with. The mere fact that he admits knowing the person, would that in itself raise a presumption in your mind that he must be guilty, because he knew or went out with this person, or that person happened to visit him at some time?

A. No.

Q. Mr. Turkus has also asked you, as well as other men, if you thought or if it was proven that there were three guilty men at the bar, would you have any hesitancy or any fear in bringing in a verdict of guilty, and you promptly answered no, that you would not. On the other hand, merely because—and you admit that you read about this case in the papers and you read headlines of articles—would you, merely because of what you may have read or what you may have heard, which you say has not made any impression upon you at all, be hesitant or afraid or fearful to bring in a verdict of Not Guilty if under your oath as a jurymen, and your conscience, you felt that the District Attorney had failed to prove the charge which he makes

against either all of these men or any one of them—would you be hesitant at all?

A. No.

Q. You are positive of that?

A. Absolutely.

Q. You were also asked whether you would be arbitrary in the jury-room or whether you would argue without any rancor or bitterness, and you said you would not. You understand, do you not, sir, that every man called on a jury has a right to his own opinion as long as that opinion is based upon his conscience and what he believes the evidence to disclose? You understand that?

A. I know that.

Q. Merely because you may be outnumbered in the jury room, because of the statement of Mr. Turkus that you should not argue with rancor and bitterness, would you change your opinion, say, "Here are eleven men against me, so there must be more force to what they say than what I say," or would you, if your opinion after listening to the reasoning of other men remained the same, would you be upright enough to retain that opinion which you formed, until you are convinced that you are wrong?

A. I have a mind of my own.

Q. I see. I take that answer to mean that you would, if you believe conscientiously in your own mind that the proof falls short of what the Court tells you is necessary, retain that opinion if after argument you have not been dissuaded from your view; is that correct, sir?

A. That is correct.

Q. Just this one other question, sir: The District Attorney may—I do not know what because, as the Judge rightly said, even the names of witnesses are no longer on an indictment and therefore we may ask you questions now which may subsequently appear frivolous or foolish and may never arise in the case, but we must ask them in the event that they do arise. That is clear to you? The District Attorney may attempt to prove the guilt of one or more of these defendants by alleged admissions, in other words, have somebody say, "Well, this man told me that he did so and so." Is that clear?

[fol. 317] A. Yes.

Q. If such is the fact and if you are charged by the Court relating to the law of admissions, would you at this

time say that you will carefully scrutinize the source from which the alleged admissions come, find out what motive the person would have in making the statement, whether he, himself being a murderer and having never been tried, has a reason, an interest, a motive for lying in this particular instance, and weigh that carefully before you place any weight upon such alleged admission?

A. I would.

Mr. Rosenthal: No further questions.

The Court: In view of the four-day holiday recess, the Court will be agreeable to tentative acceptance of jurors today. That will enable jurors to return home for the holidays but will, at the same time, enable counsel on Wednesday to further question as to possible conversations and reading fresh reports by these gentlemen in the interim. If that is agreeable to counsel, that will be done.

Mr. Talley: Will your Honor indulge us for a moment? (All counsel confer.)

The Court: If counsel are not prepared to decide at this time, then any juror selected today will sit in the box without being sworn until the close of the day. By that time [fol. 318] counsel can decide, and if you wish the jurors sworn, they will be sworn at that time.

Mr. Climenko: I think, your Honor, if we may be indulged for another two minutes, we will know by that time.

The Court: While counsel are consulting, I will withdraw and declare this to be a five-minute recess.

(After a short recess:)

Mr. Cuff: May we see your Honor for a moment?

The Court: No. Any more questions?

Mr. Turkus: There is, by the prosecution.

By Mr. Turkus:

Q. Mr. Silverman, some of the counsel went into an extended discussion with you on law, and one of them drew the analogy about a civil case. You understand, I take it, do you not, that there is a difference between the trial of a civil case and a murder case?

A. I do.

Q. Without wishing to be facetious, you understand this is not the trial of a negligence claim?

A. I do.

Q. This is the trial of a murder case. There has been an extended discussion about certain types of witnesses that

may or may not be produced by the prosecution in the trial of this murder case. As you sit in the jury-box now, would you expect the prosecutor to bring in as an accomplice or a co-killer the type of your assureds?

A. No.

Q. In weighing the believability of an accomplice or a man [fol. 319] who tells you he was out on the murder with the defendants, will you look at the other evidence in the case to see if the accomplice is telling the truth and if the other evidence in the case tends to connect the defendants with the murder?

A. I will.

Q. And if you are satisfied from the other evidence in the case that the accomplice who says he participated in the murder with the defendants at the bar is not only telling the truth, but that the other evidence connects each and every defendant, would you hesitate, would you be fearful, would you be reluctant to find a verdict of Guilty?

A. No, sir.

Q. In speaking of your association with Mr. Madden, was that a long-time association?

A. It was mostly through correspondence. He was in New York and I was in Pittsburgh, but we met several times on business.

Q. Both employed by the same company?

A. That is right.

Q. Did you ever come in contact with Mr. Cuff in any of your work?

A. No.

Q. Going back to Mr. Madden, do you understand that he was an Assistant District Attorney during the time that Mr. Geoghan was a District Attorney of the county.

A. Yes.

Q. This was a murder that happened in 1936, during the time that Mr. Geoghan was District Attorney. The case is now being tried on an O'Dwyer indictment. Is there anything about your association with Mr. Madden that might [fol. 320] have some influence on your verdict?

A. I have not seen him in probably ten years, I guess. I do not know anything about him personally. It would not have any effect on me.

Mr. Turkus: Peremptory.

(PARKER M. SPENCE, of 75 Winthrop Street, Brooklyn, New York, was called as a prospective juror.)

The Court: Unless counsel are prepared to announce a decision on the Court's suggestion, the Court will make this announcement, that counsel may have all day to consider this question and that jurors will be sworn at the close of the day unless counsel agree that they need not be sworn until Wednesday.

Mr. Talley: I would say that counsel are inclined to agree to your Honor's proposition that they be not sworn until after the holiday.

The Court: Is that agreeable all around?

Mr. Talley: That if accepted they be accepted tentatively with challenge reserved until Wednesday?

The Court: I think you are apt to get more jurors that way today than if they feel they are going to be locked up [fol. 321] over the four-day holiday.

Mr. Talley: That we must avoid, and counsel is quite agreeable to your Honor's suggestion. Personally, I think it is a very good one.

Mr. Turkus: Judge Talley made a reservation about a challenge on Wednesday. Is that correct?

Mr. Rosenthal: That is subject to further questioning.

The Court: Subject to further questioning. The juror may converse or may read something about the case in the interim that should be ascertained by further questioning.

Mr. Turkus: What I am not clear about is this: Is there a reservation of a peremptory challenge, or is it only a cause challenge?

The Court: Purely a tentative acceptance, and either side may make a peremptory challenge or a cause challenge if new cause ground is developed by further questioning on Wednesday.

Mr. Turkus: If no cause ground is developed, a peremptory challenge would mean for no reason?

The Court: Exactly. That is applicable to both sides.

Mr. Turkus: And that is reserved?

The Court: Yes. The Court is very anxious to get a few jurors in the box, at least tentatively, today, because up to [fol. 322] the present time the only progress we have made has been flat failure.

(Mr. Spence was then examined as to his qualifications.)

By Mr. Turkus:

Q. Mr. Spence, do you reside at Winthrop Street?

A. I do.

Q. In what section of Brooklyn is that?

A. Flatbush.

Q. Have you lived in Brooklyn a number of years?

A. About ten years.

Q. At any time did you live in the Brownsville-East New York section of Brooklyn?

A. No.

Q. Or have any social or business or business contact there?

A. None whatsoever.

Q. I take it that from the other examinations of the jurors that you understand that this is a capital case, a charge of murder in the first degree?

A. I do.

Q. Is there anything about the nature of the charge which would preclude you from being a fair and impartial juror?

A. No, there is not.

Q. Have you any scruple, conscientious or otherwise, against capital punishment?

A. None whatsoever.

Q. Have you heretofore had the benefit of any jury experience either in a civil or criminal case?

A. Both.

Q. And has your experience been in the County Court of Kings County in so far as the criminal case is concerned? [fol. 323] A. Judge Brancato's court.

Q. Did the case go to its conclusion, and by that I mean did the Judge charge the jury on the law in the particular case in which you were a juror?

A. No, he did not.

Q. The case never reached the jury?

A. Never reached the jury.

Q. From sitting around the court-room awaiting your chance to be a juror, did you hear a judge's charge on the law?

A. No, I don't believe I did. I believe I was selected immediately and the case was brought up, but it never went to the jury.

Q. Did you serve a week?

A. Yes, I did.

By the Court:

Q. Was your father president of a bank on Broadway and Reid Avenue?

A. My father has been dead about forty years.

Q. That would be about the time I had in mind.

A. No, it must be a different person.

By Mr. Turkus:

Q. Mr. Spence, you are listed here as a purchasing agent. Is that a correct listing?

A. Not at the present time. I am in the sales end of the business too at the present time.

Mr. Talley: We do not hear you.

The Talesman: I am also in the sales end of the business at the present time.

Q. What is the nature of the business?

A. Ceramic chemicals that has to do with pottery, glass, tile, and so forth.

[fol. 324] Q. And is your place of business in Manhattan?

A. It is in Newark, New Jersey.

Q. At any time in your past business experience did business ever bring you into the Brownsville-East New York area of Brooklyn?

A. Never.

Q. Do you have any contacts, by way of business or social, with any person or firms in that area?

A. None at all.

Q. Has business in the past brought you in contact with any firm or individual in the garment district in Manhattan?

A. No, none at all.

Q. And you have no such connection presently?

A. No.

Q. Does that hold true with respect to the clothing industry?

A. It does.

Q. Have you had any contact, directly or indirectly, with anyone in the clothing trucking industry?

A. No, none at all.

Q. Or the Brooklyn waterfront?

A. No.

Q. Since your name appeared on this special panel and you received notification, did anybody speak to you about the case?

A. Just in a general way, that the case had come up.

Q. And I take it, then, that those discussions were at your place of employment?

A. Yes, and among my family.

Q. And that would be as to the length of possible jury service in the case?

A. That is right, and just what it meant to me.

Q. No discussions as to the merits?

A. Not at all.

[fol. 325] Q. Are you, sir, in sympathy with the enforcement of the law?

A. I am.

Q. The defendants at the bar of justice are represented here by nine lawyers, and I have read their names to the other jurors, and briefly I will repeat them to you: Mr. Barshay, a former Assistant District Attorney, Mr. Climenko, and Mr. Wegman. Are any of the three gentlemen friends of yours? Do you know any of them?

A. None at all.

Q. Or do you know any of the men in their offices or any employees attached or connected with their law office?

A. Not of those three. I met Mr. Rosenthal once out at the North Hills Golf Club.

Q. Was that recently?

A. I think that was about two years ago, possibly.

By the Court:

Q. It was not the day before yesterday?

A. No, it was not.

Mr. Rosenthal: You probably passed me on the course.

The Talesman: No, it was at one of their affairs out there.

By Mr. Turkus:

Q. Did you play golf with him?

A. No, he is too good for me.

Q. At any rate, you would not be prejudiced against his client because you met him out at North Hills?

A. Certainly not.

Q. You did not see me out there at that time?

A. No.

[fol. 326] Q. Or Judge O'Dwyer?

A. No.

Q. Then the only acquaintance that you have with Mr. Rosenthal is some knowledge of his prowess as a golfer?

A. That is right.

Q. Would not have any bearing in the case?

A. None at all.

Q. I take it by specifically mentioning Mr. Rosenthal's name that you do not know Judge Talley or Mr. Cuff or Mr. Kriendler?

A. I do not.

Q. Or Mr. Fischbein or Mr. Rosenberg.

By the Court:

Q. What is the name of that concern, ceramic chemical?

A. Ruche. They were formerly a New York concern. They moved to New Jersey.

Q. Sell to Trenton potteries?

A. Some.

Q. Hydrofluoric?

A. That is a very small item, use it in frosting glass quite a bit, but it does not come into the ceramic and pottery business much. We specialize in the colors particularly that are used on pottery and glass and chinaware and porcelain.

Q. Who is the head?

A. Mr. E. Frederick Ruche. His brother recently died. There were two brothers partners. One of them recently died.

By Mr. Turkus:

Q. Do you know intimately or socially any member of the bar who specializes in the defense of criminal cases?
[fol. 327] A. No, I do not.

Q. Do you know William W. Kleinman or David Price?

A. No, I don't.

Q. A lawyer by the name of Saul Price, a former Assistant District Attorney in Manhattan?

A. No.

Q. In any of your business or other contacts did you come in connection with any official of the Amalgamated Clothing Workers of America?

A. No.

Q. Is the name of Jacob Potofsky familiar?

A. It is not.

Q. Is the name of Murray Weinstein, manager of the Clothing Cutters Union of the Amalgamated, familiar to you in any way?

A. No, it is not.

Q. Or that of Sam Katz, the business agent of that union and associated with the Amalgamated?

A. No.

Q. Is there any familiarity in the name of Bruno Belia, an organizer for the Amalgamated at its home office?

A. None whatsoever.

Q. Or that of Abe or Abraham Becker?

A. No.

Q. Or the name of a man, Yudelowitz, in the knee-pants business?

A. Never heard of him.

Q. Any familiarity with a Salvatore Marazzano?

A. No.

Q. Do you have any connection, directly or indirectly, or have you had in the past, with Local 240 of the Clothing Drivers & Helpers Union?

A. None at all.

Q. Is the name of Philip Orlofsky, a one-time manager of [fol. 328] a cutters' union connected with the Amalgamated, familiar?

A. It is not.

Q. Do you have any present or have you had any past connection with anyone in the Flour Truckmens Union, and specifically Local 138?

A. None at all.

Q. Is the name of Max Silverman familiar?

A. No, it is not.

Q. Or that of Wolfie Goldie?

A. No.

Q. Is there any familiarity to the name of William or Willie Alberts, a one-time bondsman?

A. None at all.

Q. Or the name of Emanuel Buchalter?

A. No.

Q. Phillie Buchalter?

A. No.

Q. Phillie Kowas?

A. No.

Q. The name of Bellanca or Tosca mean anything?

A. Not a thing.

Q. The name of any man with the surname of Weiss in the automobile business familiar?

A. Not at all.

Q. I take it that you have heard some discussion by counsel in connection with accomplice testimony. Have you heard that?

A. I heard smatterings of it from the rear of the room.

Q. Do you hold any prejudice against the District Attorney of the county or against the prosecution of a case wherein that type of testimony is employed or used by the prosecution?

A. No, I don't hold it against them at all.

Q. Do you hold anything against the prosecution? Do you have any bias or prejudice against the prosecution?

A. No.

[fol. 329] Q. Will you apply the tests that the Judge tells you should be applied to that type of witness?

A. I don't know that they are.

Q. Yes, I mean will you take the law exclusively from the Judge?

A. Yes.

Q. And if he applies certain rules or tests that you as a juror may or may not use in weighing the believability or the credibility of that type of witness, will you listen to the Judge's instruction in that regard and endeavor to follow it out in your deliberations?

Mr. Climenko: I object to the form of the question.

The Court: Overruled.

A. Yes.

Mr. Climenko: Exception.

Q. I did not hear your answer.

A. I say I will endeavor to carry out his instructions.

Q. As you sit now as a prospective juror, is your state of mind such that you would reject completely the testimony of an accomplice solely because he was a participant in the crime?

A. I would not reject it; I would think it over more carefully than I would other testimony, would not give as much credence to it probably immediately.

Q. Is your state of mind such that you could not believe an accomplice under any circumstances?

A. Well, unless the instructions of the Court were able [fol. 330] to convince me otherwise. At the present time I would not put much credence in the testimony of an accomplice witness.

Q. Let me try to get a more direct answer without wishing to bind you down, as it were, to your mental state. What I want to find out is this: As you sit in the jury box now as a prospective juror, is your state of mind such that no matter what the circumstances were, you just would not believe an accomplice?

A. My present state of mind is that, not having heard anything, I would not believe it, I would not give credence to what he said unless I had a very good reason to do so. I would not reject it. I would listen to him with an open mind as much as I could, but I don't believe when he came to the stand I would feel the same towards him as I would towards another witness. I would not say I was biased, but I would be a little suspicious that he had some irons in the fire or something like that.

Q. I don't mind you looking at the testimony with care and with caution, even suspicion, when it emanates from an accomplice. What I am trying to find out, Mr. Spence, is this: Would you reject that kind of testimony solely because it came from an accomplice?

A. No, not solely because of that, no.

Q. Well, would you reject it because the testimony came from an accomplice?

A. I would be inclined to. I would not say definitely [fol. 331] that I would, because the circumstances in connection with the testimony might change my opinion that I have now, but right now I feel that testimony from an accomplice witness is not as credible as one that comes in without being an accomplice to the supposed crime.

Q. Of course, in the prosecution of crime do you understand that in some cases the District Attorney has outside witnesses, what may be termed outside witnesses?

A. Yes.

Q. People that saw the actual crime committed, for example, if it were a robbery case, the victim of the robbery and the people that were near by when the occurrence took

place. You understand that there are those types of prosecution?

A. I do.

Q. Then, of course, do you appreciate, too, that there are types of prosecution where the prosecutor must avail himself of accomplice testimony?

Mr. Climenko: I object to that question, improper in form and it assumes a state of facts not applicable, and it is not true as a matter of fact or law.

The Court: Reframe it. Use the word "may."

Mr. Turkus: I will reframe it in that respect.

Q. Do you understand, Mr. Spence, that there are certain types of prosecution for crime where the District Attorney may use the testimony of an accomplice?

A. I understand it has been done, yes.

Q. What I am trying to find out, and, of course, I cannot creep into your mind except by the questions, to ascertain [fol. 332] your state of mind as to whether you would reject the testimony of an accomplice because he was a participant in the crime.

The Court: You mean uncorroborated?

Mr. Turkus: No, I don't mean uncorroborated.

The Court: If uncorroborated, he would have to reject it.

Mr. Turkus: He would not even get a chance to do anything else.

The Court: He does not know that. Maybe you better make that clear. His answers have been quite fair.

Mr. Turkus: Does your Honor preclude any further questioning?

The Court: No, I am only arguing. I think you will get to the point more quickly if you will let the witness understand just what the law does require.

Mr. Turkus: All I am endeavoring to ascertain is whether the prospective juror would reject the testimony of an accomplice under all circumstances.

The Court: Whether corroborated or uncorroborated?

Mr. Turkus: Yes, Judge.

The Court: All right.

The Talesman: Would I reject it under all circumstances?

Q. Yes.

A. No, I would not.

Q. Is your state of mind such that you would not believe the testimony of an accomplice under any circumstances?

A. No, it is not.

[fol. 333] Q. Is your state of mind such that you will look at the testimony of an accomplice carefully and with caution?

A. Yes.

Q. And that you will listen to his testimony, you won't shut your ears to it, you will listen to it?

A. I will listen to it.

Q. Will you close your mind to what he says, or will you really listen to it?

A. I will listen to it, yes.

Q. Now, you get other evidence in the case, and from the other evidence in the case you are satisfied that the accomplice is not only telling the truth about this murder, but that the defendants are connected with the murder. Would you have any bias or prejudice against the prosecution for the use of accomplice testimony?

A. Not at all, not under those conditions.

Q. Do you find any fault with the prosecutor for using that type of a witness in the case?

A. No fault with the prosecutor at all.

Q. Or would you have any bias against the prosecution?

A. None at all.

Q. Of this specific case. If you were satisfied after you heard the accomplice and you heard all the other evidence in the case that the accomplice is not only telling the truth but that the defendants at the bar are connected with the murder, by the other evidence, you would not acquit the defendants because you did not like accomplices, would you?

[fol. 334] Mr. Talley: I object to that question, if your Honor pleases. He has no right to ask that.

Mr. Turkus: I have a perfect right to ask it.

Mr. Talley: As to form and as to substance.

The Court: Overruled.

Mr. Talley: Exception.

Q. Have you lost track of it?

A. Yes, I have.

Q. (Pending question read.)

A. I would not.

Mr. Rosenthal: I object to it on the ground that he not only must be satisfied, but he must be satisfied beyond a reasonable doubt. The question is improper.

The Court: Beyond a reasonable doubt and with that degree of corroboration which the law requires.

Mr. Turkus:

Q. Are you in sympathy with law enforcement?

A. I am.

Q. And if selected as a juror in the case, will you endeavor to do justice in the case?

A. I will.

Q. And render a verdict that is in consonance with justice?

A. Yes.

Q. Have you any bias or prejudice against expert testimony, whether it be medical testimony, fingerprint testimony, or ballistics testimony?

A. No bias.

Q. I believe you presented some excuse to the Court.

A. I certainly did.

Q. Is your state of mind such that you can devote your-
[fol. 335] self to the trial of this case?

A. I would try and make it that way. At the present time things are considerably upset in my business and I found myself lapsing away from things that happen here and thinking of things in other places. Of course I would do my best to keep my mind on the business in hand here.

Q. If accepted as a juror, will you listen to the evidence and banish—

A. Yes.

Q. —outside things?

A. Yes.

Q. And decide this case on its merits?

A. Ye, I will.

Q. If accepted as a juror you will undoubtedly and as a matter of law automatically become the foreman of the jury, and if accepted will you listen to reasonable discussion of the other jurors in the case?

A. Certainly.

Q. Use common sense and understanding that you acquired in your every-day business in deciding one issue in the case: Are these defendants guilty, or are they innocent?

A. I will.

Q. If any defendant comes forward with a defense, for example, the defense of alibi, will you take the law exclusively from the Judge in that regard?

A. Yes, I will.

Q. If instructed, as you will be, on the law of reasonable doubt, will you apply the instruction of law to the case?

A. I would.

Q. And when instructed on the presumption of innocence, defendants are presumed to be innocent, will you apply that [fol. 336] presumption to the case?

A. I would.

Q. To the defendants at the bar of justice?

A. I would.

Q. Do you know the former District Attorney of the county, Mr. Geoghan?

A. No, I do not.

Q. Do you know any member of his staff?

A. None at all.

Q. Do you know Judge O'Dwyer, from out at North Hills?

A. No, I never met him out there.

Q. Do you know any member of Judge O'Dwyer's staff?

A. No, I do not.

Q. Do you attend at North Hills regularly?

A. No, I am not a member. I have been a guest of a member out there on several occasions.

Q. You have no connection now with any of the industries or any of the unions that I enumerated?

A. None at all.

Q. No contact, directly or indirectly, with any of the areas that I mentioned?

A. No.

Q. Is your mind free and open now as you sit in this jury, to decide this case on the merits?

A. Yes.

Q. Have you any opinions or impressions of prejudice against the defendants?

A. No.

Q. If selected as a juror in the case, you will devote yourself to your job as a juror and endeavor to do justice in the case?

A. I would.

Q. Listen to the evidence in the case? The argument and the inferences to be drawn up by defense counsel when they sum up?

[fol. 337] A. I would listen, yes.

Q. The argument and inferences of the prosecutor when he draws inferences in his summation?

A. Yes.

Q. The law of the case as given by the trial judge, discuss the case with reason and common sense with the other jurors, without rancor and bitterness, and after you have heard all the evidence and had the benefit of listening to all the lawyers and the District Attorney and the Judge, and you are satisfied beyond a reasonable doubt that there are three guilty men at the bar of justice, guilty of the crime of murder in the first degree, will you say that in your verdict?

A. I would.

Q. Would you hesitate, would you be reluctant, would you be fearful to say so?

A. No, I would not.

Q. Is there any reason concerning which I have elicited no response from you which would preclude you from being a fair and impartial juror?

A. No, there is not.

Q. And you say unequivocally, if satisfied beyond a reasonable doubt that there are three guilty men at the bar of justice, you will render that verdict in consonance with your finding?

A. Yes.

By Mr. Talley:

Q. Mr. Spence, if you were not satisfied beyond a reasonable doubt of the guilt of these defendants or any of them, would you hesitate to bring in a verdict of Not Guilty?

A. I would not hesitate at all.

[fol. 338] Q. Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case, any reason at all?

A. Well, only my outside affairs, that's all, if that is a reason.

Q. You mean that you might be distracted by your being away from your business?

A. That is right.

Q. That is the only thing in your mind now that might interfere with your—

A. That and the testimony of the accomplice witness would be the only doubt in my mind.

Q. Will you repeat that?

A. The testimony of accomplice witness would be the only thing that would in any way hinder me from fulfilling my duty as a juror.

Q. With regard to the testimony of accomplice witness, if the Court charges you that it is your duty to scrutinize such testimony with extreme care and caution, that you would do?

A. I would do it, yes, to the best of my ability.

Q. Yes, that is all that is expected of you or any juror, to do the best of your ability. Have you read anything about this case or any of the defendants connected with it?

A. News items telling it had come to trial and giving supposed cause of the murder, the motive.

Q. Did you form any impression from the reading of news items or anything else with respect to the guilt or innocence of these defendants?

A. Not to the guilt or innocence of them, no.

[fol. 339] Q. Do you go into the jury box with any impression about either of these defendants, one way or the other?

A. Well, yes, I do.

Q. Is that impression an unfavorable one to the defendants or any of them?

A. I would say it was.

Q. And that impression is formed solely upon what you read in the newspapers; is that so?

A. That is right.

Q. Did you read any articles in *The Mirror*?

A. I did not.

Q. Did you read the Life and Achievements of the District Attorney as set on in the *Journal American*?

A. No, I did not.

Q. Would it take some evidence to remove the unfavorable impression that you say you formed about these defendants or any of them from what you read?

A. Some evidence.

Q. Yes.

A. The impression that I have has nothing to do with their guilt or innocence in this particular case. I have an unfavorable impression of the defendants as men from the newspapers.

Q. You mean with respect to their character and reputation?

A. That is right.

Q. This case, then, would start with a handicap against them so far as you were concerned?

A. Yes, I think it would to some degree.

Q. And that would require some evidence, wouldn't it, adduced in this case, to change that impression?

A. It would; it would.

[fol. 340] Q. If the Court charges you that it is the law of this state, in fact, it is one of the fundamental laws of the country, that every defendant is presumed to be innocent until his guilt is proven and that in addition to that it must be proven beyond a reasonable doubt, your actions as a juror would be determined by that charge of the law, would it?

A. My efforts as a juror would be put forward in that respect. I would make every effort to discard what was in my mind and judge them solely on the evidence, and as charged by the Court.

Q. Do you think it would require some effort upon your part to do that?

A. At the present time it would, yes.

Q. It would?

A. The way I feel now, yes.

Q. And the only way that it could be removed, Mr. Spence, would be by some testimony, wouldn't it?

A. That is right, of what happened during the trial.

Q. Something during the trial? So that we would not start off with the presumption that they are innocent?

A. Yes.

Q. As far as you are concerned, would they?

A. Yes, they would.

Q. Despite your impression gathered from what you read as to their character, you still would accord them the benefit of the presumption of innocence, would you?

A. Yes, on the charge.

Q. Irrespective of the impressions you have formed from the reading of newspapers with respect to their character,

[fol. 341] you still believe that the evidence in the case might be such that would satisfy you they were not guilty of the particular crime by which they are charged; is that correct?

A. That could happen.

Q. Do you understand that an indictment for a crime has no probative force about it at all?

A. I understand that.

Q. And do you understand it is merely an accusation in writing, which is made by the District Attorney of the county?

A. That is right.

Q. And it brings them into court and starts the machinery of the trial going? That is quite clear to you, is it?

A. Very clear.

Q. And you do not attach any more importance to an indictment than just that, that it is a charge against them?

A. Not against the men on trial. I do against the accomplice witness. If he has been indicted and he is testifying, he has some reason to avoid that indictment.

Q. Or punishment for the crime?

A. That is right. I believe that.

Q. And that is why you follow the instructions of the Court to scrutinize carefully the testimony of a witness who said he was an accomplice in a crime?

A. That is right. I would make every effort to believe that he was an ordinary witness and had no purpose in being an accomplice witness, but it would be rather difficult to get that out of my mind.

[fol. 342] Q. If the Court charges you you are not beholden, you are not compelled to get it out of your mind, that would make it more uncomfortable for you?

A. If I did not?

Q. If the Court charged you it is your duty as a juror to scrutinize with great care the testimony of an accomplice, that would not make it difficult for you, would it?

A. I would follow the Court's instructions to the best of my ability.

Q. And you would scrutinize the testimony of an accomplice with great care?

A. Yes, I would. I would scrutinize the testimony of any witness with great care.

Q. But particularly of an accomplice in a crime?

A. More carefully.

Q. Yes, that is what the Court would charge you is the law in this case. You are not acquainted with anybody now attached to the District Attorney's office?

A. No one at all.

Q. Are you acquainted with any of the officials of the Police Department?

A. No officials, no.

Q. Any members of the Police Department at all are you acquainted with?

A. I have a brother-in-law who is in the Police Department.

Q. What rank?

A. Patrolman.

Q. In what borough is he working?

A. In Manhattan, Second Precinct downtown.

Q. In the Detective Bureau is he?

A. No.

Q. Have you discussed this case or any of its phases, or [fol. 343] have you discussed the defendants or any of them with your brother?

A. My brother-in-law.

Q. Your brother-in-law.

A. No, I have not seen him. I have only seen him briefly since I have been called as a juror.

Q. Do you know whether he is acquainted, from his identification in the Police Department, with Judge O'Dwyer, the District Attorney?

A. No, I don't believe he is.

Q. Would the fact that the District Attorney is a candidate for Mayor make any difference in your deliberations upon this case?

A. None at all.

Q. Could you dissociate that fact entirely from your deliberations as a juror to determine the guilt?

A. Absolutely. It never entered by mind.

Q. It would not occur to you in your mind at all?

A. No way at all.

Mr. Rosenthal: Your Honor, could I make a request? In view of the fact that it is necessary for all the defendants to join in a challenge for cause which the panel here may not know, it becomes necessary for counsel to confer together. I don't want any unfavorable impression to be gained by that fact.

The Court: There cannot be any unfavorable impressions.

Mr. Rosenthal: But the fact is that we all must join in the challenge, in the event there is one.

The Court: That is the law; you have to talk together.

[fol. 344] Mr. Rosenthal: Thank you, sir.

By Mr. Barshay:

Q. Mr. Spence, just a few questions to clear up a little odds and ends. I heard you say that a delay in this case may prejudice your business interests. Is that so, sir, to some degree?

A. Yes.

Q. I hope you won't charge that to either side in this case?

A. No, I would not charge it to them. It would be a condition that I could not avoid, but I would not hold any prejudice on it.

Q. It would not prejudice either side, would it?

A. No.

Q. By no means?

A. None at all.

Q. Is your business condition of such a nature that it would take your mind off your work as a juror, sir?

A. Well, that is one thing that I am not too sure of, that conditions in the business are considerably upset due to the death of a member of the firm. My duties have been increased to take over some of his, and it is an unfortunate time that this should occur to me.

By the Court:

Q. Priorities?

A. We are working now in connection with some naval lenses. It has gone through the laboratory stage of development, and I am more or less handling it personally.

Q. You do not make lenses?

A. We make a certain material is used in producing this [fol. 345] type of lens that the Navy is developing.

Q. Pigment in lens?

A. Yes, some metallic pigment.

Q. Is your concern a jobbing concern?

A. Manufacture.

Q. Or do you manufacture from the raw material?

A. Manufacture from the raw material, and some items we buy.

Q. You make the ceramic colors?

A. That is right.

Q. And the gold?

A. That is a nucleus of our business, and it is one of those that has been developed to a state that can be used for this particular type of lens. It has all passed through the laboratory stage and a company has been formed to go into manufacture of these lenses. That is just where we are now. As a matter of fact, I have the name of the company only last week which has been formed to produce the lenses. While nothing is in contract form at the present time, we hope to be the ones that will supply the metallic preparation.

Q. That would have to go to the American Optical Company, wouldn't it?

A. No, it is not going through that at all. You mean up in Massachusetts?

Q. Yes.

A. No, it is not being handled through them at all. As I say, a new company has been formed. As a matter of fact, the experiments did not even go through our laboratory. It went through an outside source laboratory and having been approved, then the company was formed for making—

Q. It is a secret formula?

[fol. 346] A. The formula is not secret; the process is secret.

Q. You have the process?

A. We have the material used in the process, and that is the situation as it is today.

By Mr. Barshay:

Q. Mr. Spence, of course you realize in this procedure here that some things are entirely with the Court and not with us, either Mr. Turkus or our counsel?

A. I do.

Q. You understand?

A. I do.

Q. Would the fact that the jury when chosen, if you are one of them, would be locked up for the duration of the trial at the order of the Court, would that prejudice you against any of the defendants?

A. No, it would make me resentful of the whole condition, but I don't think it would prejudice me against any individual or group of individuals.

Q. Will your resentment find a subject which is one of the defendants?

A. No, I would not take it out on anybody, so to speak.

Q. We will take your word for it. You also said, Mr. Spence, that in reading about the case you read about the motive?

A. That is right.

Q. Something in the newspaper?

A. That is right.

Q. Did you accept the accuracy of that statement in the newspaper?

A. I accepted it as fitting in. I do not accept any newspaper items as truths, but I accepted it as fitting in with my own conclusion that that could be the motive very easily. [fol. 347] what the newspaper stated.

Q. And, of course, that conclusion that you drew is unfavorable to some of the defendants, or maybe two of them?

A. At the present time it is.

Q. And by reason of that you said that it would require some evidence to remove that conclusion or opinion?

A. That is correct.

Q. Isn't that so?

A. That is correct.

Q. I take it you understand that the District Attorney would not furnish you with evidence to remove that conclusion or impression?

A. Naturally not.

Q. So you would require the defendants to furnish evidence to remove that conclusion or impression, wouldn't you?

A. Yes.

Q. I may say to you, Mr. Juror, that that conclusion, that you would require testimony on the part of the defendants, is inconsistent with the principles of law under which we try cases, because the Court shall tell you that each defendant, if he wants to, in his own choice, may remain absolutely silent, he need not prove anything at all, he need not disprove anything at all, he need not even explain any accusation against him. Would that effect your judgment?

A. Would that affect my judgment?

Q. Yes.

A. I don't understand the question thoroughly.

Q. I will put it a different way. You said the defendants will have to offer some testimony.

A. Yes.

[fol. 348] Q. To remove that impression; is that correct?

A. That is correct.

Q. Other than speaking for the defendant Buchalter, if in the wisdom or lack of wisdom of counsel we should decide to remain absolutely silent and not offer a single word of testimony here, then you would be placing us in the position of demanding from us an explanation which the law says we need not offer; isn't that so?

A. Apparently it is, yes.

Q. Then you will hold it against us if we do not offer—

A. I would still have that opinion in the matter that I had gained from the newspaper article, what the newspaper stated, in collaboration with my own opinion in the matter. I would have received nothing to change my opinion.

Q. And that would preclude you from giving this defendant a fair trial?

A. I imagine it would in some respects.

Q. You want to be a fair and impartial juror, don't you?

A. I certainly do.

Q. Then you place the defendant Buchalter in a very unenviable position.

A. I don't do it; it is the circumstance that I happened to read the newspaper. It is my own mind. I have not a legal mind; I just read and conclude, as anybody does, draw an opinion.

Q. You have a right to find any way you want. I find no fault with your opinion at all, but it would not be fair to the defendant Buchalter, would it?

[fol. 349] A. No, I don't believe it would be thoroughly fair to him, no.

Mr. Barshay: I challenge the juror for cause.

The Court: Try the challenge.

PARKER M. SPENCE, of 75 Winthrop Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Barshay:

Q. Should I ask you, now that you are under oath, the same questions that I asked you before you were sworn, would you make the same answers, sir?

A. I would.

Mr. Barshay: I press the challenge.

Mr. Turkus: No questions.

Mr. Talley: We join in.

The Court: Sustained.

CARL J. JOHNSON, of 107—80th Street, Brooklyn, New York, was then examined as to his qualifications.

By Mr. Turkus:

Q. Mr. Johnson, do you live in the Bay Ridge section of Brooklyn?

A. Yes.

Q. Lived in Brooklyn for a number of years?

A. All my life.

Q. I believe when you were addressing the Court you said you were in the business of manufacturing window shades and other articles of that type?

A. Yes.

Q. Does business bring you into the Brownsville-East [fol. 350] New York area of Brooklyn?

A. It has, yes.

Q. Does it presently?

A. Yes.

Q. Is it with firms doing business in that district?

A. Yes.

Q. You personally go into the neighborhood?

A. On occasions.

Q. Do you have any business in the garment district of Manhattan?

A. No, but based on the questions that you raised with other jurors, I have had some business dealings with the Amalgamated Clothing Workers and Mr. Potofaky.

Q. Has that been recent?

A. Yes.

Q. Is it in connection with your own business?

A. Yes.

Q. Are any of the employees of your business in the Amalgamated as members of that union?

A. No.

Q. Do you secure material from any firm or corporation which is identified with the Amalgamated?

A. They buy it from us.

Q. The Amalgamated?

A. A gentleman that was set up in business by that union buys our materials. Based on his financial condition, I would not check his credit, and the Amalgamated Clothing Workers Union guaranteed our account.

Q. Is that the limit of your contact with that union?

A. That is the limit of my contact.

Q. Is the name of Murray Weinstein, a manager of the Clothing Cutters Union, Local 4, of the Amalgamated, familiar to you?

A. No, sir.

[fol. 351] Q. Is the name of Samuel Katz or Sam Katz, a business agent of Local 4 of the Clothing Cutters Union of The Amalgamated, familiar?

A. No, sir.

Q. Did you ever hear the name of Bruno Belia?

A. No.

Q. Organizer at the home office of the Amalgamated?

A. No.

Q. Or of Salvatore Marazzano?

A. No.

Q. Do you know any officials of Local 240 of the Clothing Drivers & Helpers Union?

A. No, sir.

Q. Or of Local 138 of the Flour Truckmens Union?

A. No, sir.

Q. Any familiarity with the name of Silverman, Max Silverman, or Wolfie Goldis?

A. The name Silverman recalls to my mind that I saw or rather, I was on the Luckman conspiracy case, and I think I might have seen Silverman at that time.

Q. Were you a prospective juror in that case?

A. I was a juror.

The Court: Grand Juror?

The Talesman: No, I was a juror.

Q. In that case where Silverman was a defendant?

A. I believe he was one of the defendants, if I recall it correctly.

Q. Conspiracy charge, was it?

A. Yes.

Q. Is the name of Willie or William Alberts, a bondsman, familiar?

A. No, sir.

Q. That of Emanuel Buchalter or Phillip Buchalter?

A. No, sir.

Q. Or Phillie Kowas?

A. No.

[fol. 352] Q. Bellanca, or Tosca? Did you ever hear those names?

A. No.

Q. Is there anything about the nature of the charge, Mr. Johnson, which would preclude you from presiding as a trial juror in the case, namely, a charge of murder in the first degree?

A. No.

Q. Have you any conscientious or other scruple against capital punishment?

A. No.

Q. Will you decide the case on the facts and on the merits regardless of the punishment?

A. Yes.

Q. Since your name appeared on this jury panel and since you received notification, did anyone speak to you about this Rosen case?

A. My family has, yes.

Q. And that was with respect to the possibility of serving as a juror in the case?

Mr. Barshay: Your Honor, I object to the form of the question. It is leading and suggestive of an answer. Let him tell what the family spoke about.

The Court: Overruled.

Mr. Barshay: Exception.

(Pending question read.)

Mr. Barshay: There may be other reasons. That is my objection. There may be other reasons that the family spoke to him about other than the one implied in the question.

Mr. Turkus: The juror can take care of himself.

[fol. 353] Mr. Barshay: The question requires a yes or no answer.

Mr. Turkus: I wish to argue the point.

The Court: Hear what the juryman says.

A. Will you repeat the question, please?

Q. (Pending question read.)

A. Yes.

Q. Have you had any discussion as to the merits of the case?

A. Yes.

Q. With members of your family?

A. Yes.

Q. Anyone outside your family?

A. Yes.

Q. Anyone connected with the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Anyone connected with Local 138 of the Flour Truckmen?

A. No, sir.

Q. The Clothing Drivers & Helpers Union?

A. No, sir.

Q. Anyone in the garment district or clothing district of Manhattan?

A. No.

Q. Anyone associated or connected at the Brooklyn waterfront?

A. No, sir.

Q. Are you in sympathy with the enforcement of the law, the Penal Law?

A. Yes, sir.

Q. Do you know any of the lawyers who are defending the men at the bar? I have read the names off. I will re-read them.

A. I don't know any of them.

Q. Is the name of William W. Kleinman or David Price familiar to you?

A. Yes, sir.

[fol. 354] Q. By reading?

A. By that conspiracy case that I was a juror on.

By the Court:

Q. That was tried in June four years ago?

A. About that, I believe, yes.

By Mr. Turkus:

Q. You don't know them other than that?

A. No.

Q. Saul Price, a lawyer in Manhattan, one-time Assistant District Attorney, have any contact with him?

A. None at all.

By the Court:

Q. Where is your place of business?

A. 225 Fifth Avenue.

Q. What is the name of it?

A. The Columbia Mills, Incorporated.

Q. Where are the mills located?

A. Minetta, New York, West Pullman, Illinois, Los Angeles, California, Saginaw, Michigan.

Q. You make window shades of fabric?

A. We make the window shade cloth.

Q. Purely a textile business?

A. Yes, sir, except for the fact we manufacture Venetian blinds also.

By Mr. Turkus:

Q. Mr. Johnson, do you have any bias against the District Attorney of the county or any prejudice against the prosecution which employs the use of accomplice testimony?

A. I do.

Q. Is that a strong prejudice?

A. Yes, sir.

[fol. 355] Q. Is the prejudice directed to the prosecutor or the prosecution, or both?

A. It has reference to my position with reference to an accomplice.

Q. Have you read of this case in the newspaper?

A. Yes, sir.

Q. Have you formed an impression or opinion in connection with it?

A. I believe so.

Q. Would you say it was an opinion or an impression?

Mr. Climenko: I object to the question.

The Court: Overruled.

Mr. Climenko: Exception.

A. I would say it was an impression.

Q. Is it an impression that goes to the merits of the case?

A. I don't understand that question.

Q. Is it an impression that goes to the question of guilt or innocence of the defendants?

A. Yes.

Q. Is it an impression that would require some evidence on the part of the defendant to remove?

A. Yes, sir.

Q. On the part of all of them, or one?

Mr. Rosenthal: That is objected to.

Mr. Turkus: Withdrawn.

Q. As you sit in the jury box now, would you expect the defendant against whom you have that opinion to present evidence to you to dispel it?

A. Yes.

Q. And unless he did so, you would have the same impression or opinion that you have now?

A. Yes, sir.

[fol. 356] Q. Even though he were under no legal obligation to do so?

A. That is right.

Mr. Turkus: Challenge for cause.

Mr. Barshay: Everybody joins in.

The Court: What is that?

Mr. Barshay: We have no questions, your Honor.

The Court: Any challenge for cause?

Mr. Barshay: The District Attorney made a challenge.

The Court: I did not hear any challenge.

Mr. Turkus: There is, your Honor. I am compelled to challenge when he has that opinion against the defendant.

The Court: I did not hear it. Try the challenge.

CARL J. JOHNSON, of 107 Eightieth Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Turkus:

Q. Mr. Johnson, before you were sworn on this challenge, I asked you questions affecting a prejudice that you have against one of the defendants. Do you recall that?

A. Yes, sir.

Q. The responses that you made were true and sincere, were they not?

A. They were.

Q. You have that prejudice?

A. I have.

Q. That precludes you from being fair and impartial to the defendants?

A. Yes.

Mr. Rosenthal: No questions.

The Court: Sustained.

[fol. 357] JOHN F. FITZGERALD, of 1823 East 16th Street, Brooklyn, New York, was examined as to his qualifications.

By Mr. Turkus:

Q. Mr. Fitzgerald, are you living in this Flatbush section of Brooklyn?

A. Yes, sir.

Q. Have you lived there for a number of years?

A. About twenty-eight years.

Q. On the trestle board you are listed as an assistant treasurer. Is that with some firm or corporation?

A. Yes, sir, Postal Telegraph.

Q. Offices in Manhattan?

A. Yes, sir.

Q. And are you employed in the office in Manhattan?

A. I am.

Q. Is there anything about the nature of the charge, namely, the charge of murder in the first degree, which would impair or prevent your service as a juror?

A. No, sir.

Q. Do you have any scruple, conscientious or otherwise, against capital punishment?

A. I have not.

Q. Would you permit punishment to enter into your deliberations as to guilt or innocence?

A. No, I would not.

Q. Do you know any of the nine lawyers representing these defendants at the bar?

A. No, I don't.

Q. Do you know anyone connected with their law offices?

A. No, I don't.

Q. Do you know intimately any member of the bar who [fol. 358] specializes in the defense of criminal cases?

A. No, sir.

Q. Is the name of William W. Kleinman or David Price familiar?

A. No, sir.

Q. Or that of Saul Price?

A. No.

Q. Have you had any business or other contacts, directly or indirectly, with any official of the Amalgamated Clothing Workers of America?

A. No, I have not.

Q. Were the names of Jacob Potofsky, Murray Weinstein, or Sam Katz familiar as I read them off to other jurors?

A. No.

Q. That of Bruno Belia or Salvatore Marazzano?

A. No, sir.

Q. Or the name of Philip Orlofsky, a one-time manager of the Cutters Union, Local 4, of the Amalgamated?

A. No.

Q. Do you know or are you acquainted with any official of Local 138 of the Flour Truckmens Union?

A. No, sir.

Q. Local 240 of the Clothing Drivers & Helpers Union?

A. No.

Q. Is the name of William Alberts, a one-time bondsman, familiar?

A. No, sir.

Q. Or that of Phillie Buchalter, or Phillie Kowas?

A. No, sir.

Q. Emanuel Buchalter, is that name familiar?

A. No, it is not.

Q. Is the name of Weiss, running some rental agency of automobiles, familiar?

A. No, sir.

Q. The names of Bellanca or Tosca mean anything to you?

A. They do not.

Q. Did business at any time bring you into contact with [fol. 359] the Brownsville-East New York area of Brooklyn?

A. No, sir.

Q. The garment district of Manhattan?

A. No.

Q. Or the clothing district?

A. No.

Q. Or any clothing truckers?

A. No, sir.

Q. Or trucking companies?

A. No.

Q. Any connection, directly or indirectly, with anyone on the Brooklyn waterfront?

A. No.

Q. Are you in sympathy with the enforcement of the Penal Law of the state?

A. I am.

Q. Have you heretofore served as a juror in a criminal case?

A. Not in a criminal case, no.

Q. Was it in a civil case?

A. Yes.

Q. Did the case go to a conclusion, and by that I mean did you hear the Judge's charge on the law?

A. I did.

Q. In this case will you accept the law without qualification and without reservation from the trial judge, Judge Taylor?

A. I will.

Q. If the Judge charges you, as he will, on the law of reasonable doubt, will you do your best to follow that instruction?

A. I will.

Q. And when he charges you on the presumption of innocence, will you give that presumption to the benefit of the defendants?

A. I will.

Q. If, after you have heard the whole case, however, you are satisfied beyond a reasonable doubt that the defendants [fol. 360] at the bar are guilty as charged, would you hesitate to say so in your verdict?

A. I would not.

Q. Would you have any fear or reluctance in so saying?

A. No, sir.

Q. Is there anything as yet concerning which I have elicited no inquiry or no response, rather, which affects your ability to sit on this jury as a fair and impartial juror?

A. No, sir, except that the length of the trial might make me anxious of what is going on at home.

Mr. Talley: We did not hear you.

The Talesman: The length of the trial might make me think of what is going on at the office or at home.

By the Court:

Q. The Postal Telegraph Company will be there when you get back.

A. Yes, I hope so.

Q. Fifty-one years in existence, isn't it?

A. That is right.

By Mr. Turkus:

Q. I suppose your state of mind is that nobody goes looking furtively for jury duty, but if you are called to serve, you will do your job as a juror in consonance with your oath?

A. I would.

Q. So that as you sit in the jury box now there is nothing which would impair your ability to carry out your oath of office as a juror and decide this case on the evidence; is [fol. 361] that correct?

A. That is correct.

Q. Do you know Judge O'Dwyer, the District Attorney of the county?

A. No, sir.

Q. Do you know any member of his staff?

A. No.

Q. Do you know the former District Attorney, Mr. Geoghan, or any member of his staff?

A. I do not.

Q. In the event that any one or more defendants should invoke the defense of alibi, will you take the law with respect to that defense exclusively from the trial judge and apply the law that he gives you?

A. I will.

Q. As you sit in the jury box, you have no prejudice, then, either against the prosecution or in favor of it?

A. No.

Q. And you have no prejudice against any of the defendants?

A. No, sir.

Q. Do you find any fault or have you any prejudice against the District Attorney of the county for the use of accomplice testimony, that is, taking one of the participants in the crime and having him testify against the defendants on trial? Do you find any criticism, have you any prejudice against the prosecutor for the use of such testimony, or against the prosecution?

A. No.

Q. If you are satisfied from all the evidence in the case the accomplice is not only telling the truth but the other evidence tends to connect the defendants with the commission of the murder, and you are satisfied of that beyond [fol. 362] a reasonable doubt, would you hesitate to say so in your verdict?

A. No, I would not.

Q. If selected as a juror in the case, will you endeavor conscientiously to arrive at a just verdict?

A. I will.

Q. Will you listen to fair and reasonable discussion and argument by the other jurors in the case?

A. Yes, sir.

Q. Will you use the common sense and understanding that you get in your every-day business experience and daily life, in weighing the one issue in the case, the guilt or innocence of the defendants?

A. Yes, sir.

Q. If at the end of the entire case, after you have heard all the evidence and you have listened to the lawyers for the defendants at the bar of justice tell you what they think of the evidence and the inferences they draw, and you listen to the District Attorney make his summation, and then have the benefit of the discussion of law and the

charge of the learned Court on the law, you talk the case over without rancor and bitterness with the other jurors, and you come to the conclusion that you are satisfied beyond a reasonable doubt that Buchalter, Weiss and Capone are guilty of murder in the first degree, will you say that in your verdict?

A. I will.

Q. Will you say it without fear, without reluctance, and without hesitation?

A. Yes, sir.

By Mr. Barshay:

Q. Mr. Fitzgerald, are you related in any way to judge [fol. 363] Fitzgerald of this court?

A. No, sir.

Q. Are you related to Detective Fitzgerald?

A. No, sir.

Q. Or Patrolman Fitzgerald?

A. No, sir.

Q. You have no relatives by that name in the law-enforcing agencies of the City or State of New York?

A. No, I have not.

Q. Do you belong to any association with any of the assistants of Judge O'Dwyer?

A. No.

Q. Or Judge O'Dwyer himself?

A. No.

Q. Social, political, or otherwise?

A. None whatever.

Q. Church?

A. No.

Q. Did you ever hear any of Judge O'Dwyer's assistants speak on the subject of crime?

A. No, I didn't.

Q. Never?

A. Never.

Q. Or the Judge himself?

A. No, I didn't.

Q. Are you on any committee, sir, to elect Judge O'Dwyer as the Mayor of New York?

A. No, I am not.

Q. Do you intend to be?

A. I don't think so.

Q. Are you intimately familiar with any police official of the City of New York?

A. Patrolman, that is all.

Q. And do you know where they are stationed?

A. Yes, he is up in Harlem right now.

Q. Do you know him intimately?

A. Yes, very good friend.

Q. Do they reside in Brooklyn?

A. Yes, just one.

Q. And have you ever discussed the subject of the prosecution of crime with them?

A. No, I have not.

[fol. 364] Q. Or the subject of the District Attorney's office in Brooklyn?

A. No.

Q. Or any of their own particular cases?

A. Well, spoke of different men he made arrests, that's all.

Q. Nothing to do with any Brooklyn case?

A. No.

Q. Are you a member of any law-enforcing agency yourself?

A. No.

Q. Or are you a member of any society for the prevention of crime?

A. No, I am not.

Q. Were you ever a grand juror?

A. No.

Q. Were you ever the victim of a crime?

A. No, I was not.

Q. Was any member of your family?

A. I might correct myself.

Q. Yes.

A. Last summer we were robbed, burglarized.

Q. Your home was burglarized last summer?

A. Yes.

Q. As the result of that did you form any prejudice against any person accused of crime?

A. No, they never arrested anybody for it.

By the Court:

Q. This was a Flatbush burglary?

A. That is right.

Q. Kings Highway and East 16th Street?

A. Well, it was the residence of my father. At that time they were away, and I was staying over there.

Q. Where is that?

A. That is on the corner of Ocean Avenue and Avenue T.

[fol. 365] Q. That is only a short distance from where you live?

A. That is right.

Q. Do you use the Kings Highway station of the Brighton Line?

A. Yes.

By Mr. Barshay:

Q. Mr. Fitzgerald, have you read about the case itself?

A. Just the news items, and I did read one article in the New York *Mirror*.

Q. Did you form an opinion as to the accuracy of the news items?

A. No, I didn't.

Q. With respect to this case?

A. No, I didn't.

Q. Are any of the facts contained in those items fresh in your mind now?

A. Yes.

Q. Are they detrimental to the defendants or any of them?

A. Well, I don't believe they would be detrimental.

Q. You say you don't believe. Is it that you are not certain?

A. I am not certain, no, that is right.

Q. They may be detrimental?

A. That is right?

Q. And the article that you read in the *Daily Mirror*, is that fresh in your mind?

A. There was not very much of it that I did read.

Q. Whatever you read, did you determine its accuracy?

A. No, I didn't.

Q. Did you form an opinion one way or the other with respect to its accuracy?

[fol. 366] A. Well, I believe that it was written on former cases.

Q. On former cases?

A. That is right.

Q. Did you read anything at all other than what you have already told us, magazines?

A. No, I didn't.

Q. Or heard on the radio any discussion?

A. No.

Q. Did you read anything about the defendants any place at all?

A. No, sir.

Q. As you sit here now, sir, is that opinion which you say is detrimental still in your mind?

Mr. Turkus: I object to the form "now," because the prospective talesman has said that he has read nothing of the defendant on trial.

Mr. Barshay: Talking about——

Mr. Turkus: The man may have a general prejudice against the commission of crime. That does not disqualify him.

The Court: Clarify your question.

Mr. Barshay: I am repeating the language that you used yourself.

The Court: Not repeating the context.

Q. What is detrimental toward the defendant that you said you read, some conclusion that you drew from reading the article isn't that so?

A. Yes.

Q. Mr. Fitzgerald, that remains with you right now?

A. That is right.

[fol. 367] Q. And that would require some proof on the part of the defendants to remove that detrimental impression, wouldn't it?

A. That is right.

Q. And you would require the defendants to furnish that proof?

A. I believe so.

Q. Or somebody on their behalf?

A. Yes.

Q. Then you would receive personally more than the law requires of the defendants, isn't that so?

The Court: This is clearly establishing an escape medium for the juror if he does not want to serve. You are putting the words in his mouth.

Mr. Barshay: I must strenuously object to your Honor's comment.

[fol. 368] The Court: Make it doubly strenuously, but it goes just the same. You will have to frame your questions in such a way as not to constantly lead.

Mr. Barshay: I object to that, sir.

The Court: You are doing the thinking for the talesman.

Mr. Barshay: I object to that comment.

The Court: Go ahead with the case.

Mr. Barshay: You don't feel as though I am putting any words in your mouth, do you, sir? (to talesman)

The Court: It is immaterial what the gentleman thinks; it is what the Court thinks that counts.

Mr. Barshay: I object to that, your Honor. I am addressing the juror. I am seeking his determination in the matter.

The Court: Very well. We will take a recess now till twenty minutes of two. Then conduct the questioning direct.

Defendants are remanded.

Recess till twenty minutes to two.

(A recess was thereupon taken until 1:40 p. m.)

[fol. 369] Afternoon Session—Trial Resumed

JOHN J. FITZGERALD, No. 2675, residing at 1823 East 16th Street, Brooklyn, New York, was examined as to his qualifications.

By Mr. Barshay:

Q. If I am correct, let me know. Did you say that as a result of some reading some place you formed an impression which is detrimental to the defendants, and which would require dissipation by the defendants on their behalf; did you said that?

A. Yes, sir.

Q. Is that your opinion right now?

A. Yes, sir.

Q. Unless the defendants or any of them or someone in their behalf dissipates that detrimental impression, it will not be removed?

A. No, sir.

Q. That is your honest answer?

A. Yes, sir.

Mr. Barshay: I challenge for cause.

The Court: Try the challenge.

(The talesman was then sworn, on the challenge.)

By Mr. Barshay:

Q. Would you answer the same way now that you are under oath as you just answered before?

A. I would.

Mr. Barshay: All counsel press the challenge.

By Mr. Turkus:

Q. At the outset, I think I got to the point with you where you said you could obey your oath as to the evidence, as a [fol. 370] juror, and decide the case on the merits; do you recall that?

A. Yes, sir.

Q. I think you also said you had never heretofore served as a juror in a criminal case.

A. Yes, sir.

Q. So, accordingly, you are familiar, aren't you, with some of the rules of evidence in criminal cases?

A. That is right.

Q. If you were instructed by the Judge presiding at the trial that no defendant in a criminal case has any burden whatever, would you obey that instruction of law?

A. I would.

Q. And if the Judge tells you that the defendant may or may not take the stand as he deems fit, and if he does not take the stand no inference may be drawn against him, would you obey that instruction?

A. Yes, sir.

Q. And if the trial justice should charge you that every defendant has the benefit or presumption of innocence and that he is presumed to be innocent unless his guilt is established beyond a reasonable doubt by the prosecution, will you follow that instruction?

A. I will.

Q. As you sit in the jury box now, have you any bias or prejudice against the law as I have just enumerated it to you?

A. No, sir.

Q. Understanding now that the defendant has no burden whatever in a criminal case, would you, nevertheless, expect him to give you facts in the case—now you understand he has no such obligation—would you feel he must give you evidence?

[fol. 371] A. My impression I formed from reading the article, not in this case—

Q. In other words, whatever you read has nothing to do—

Mr. Barshay: Let the juror finish his answer.

The Court: Yes.

Q. In other words, whatever you read had nothing to do with the Rosen case or the Rosen murder?

A. That is right.

Q. So you have read some articles in the newspaper in connection with other matters?

A. Yes, sir.

Q. I take it you understand your state of mind is such that certain cases are publicised more or less?

A. Yes, sir.

Q. I take it when people do read certain articles they leave impression—when you read your daily paper you are left with some impression?

A. Yes, sir.

Q. Now, the test is this—and before I apply the test may I say this—should the Judge charge you the law that it is the burden of the District Attorney to establish guilt beyond a reasonable doubt and that it must be fulfilled by evidence he brings in the court-room and not upon the basis of any newspaper article, would you follow that instruction?

A. Yes, sir.

Q. Do you find any fault with such a law?

A. No, sir.

Q. That is sensible and reasonable?

A. Yes, sir.

Q. That you establish the guilt of the defendants before a Court and jury upon evidence the prosecution brings [fol. 372] into court?

A. Yes, sir.

Q. Do you find any fault with the proposition that no newspaper article can supply any proof to a jury?

A. No, sir.

Q. That is sensible?

A. Yes, sir.

Q. Now, the test is this: Knowing that the defendant has no burden in this case, knowing that the burden is with the prosecution, to establish guilt beyond a reasonable doubt upon evidence—that he cannot remedy anything and cannot supplement anything by newspaper articles, do you feel you can lay aside whatever impression you may have gathered and decide this case fairly and squarely, and give a just result and just verdict on the evidence, in consonance with your oath as a juror?

A. I would try to.

By the Court:

Q. Would you or not?

A. I think I could.

Q. We have to get something better than that. Would you or wouldn't you?

By Mr. Turkus:

Q. Let me take you step by step again. Regardless of whether you think ill or well of a person, do you realize that on a specific charge he is entitled to justice?

A. Yes, sir.

Q. To be judged upon the evidence as to that specific charge?

A. Yes, sir.

Q. And surely don't you know whether or not you are competent and capable and will actually give such justice?

A. I would.

[fol. 373] Q. Without regard to your previous notion concerning his character?

A. Yes, sir.

By Mr. Rosenthal:

Q. When you answered Mr. Barshay as to your attitude or state of mind, you had no quarrel with any of the laws of our land at that time?

A. No, sir.

Q. When you answered Mr. Barshay you had in mind the knowledge that you would get the law from the Court?

A. I did.

Q. So when you made your answer to him it was with the thought and knowledge in mind that the law should come from the Court?

A. Yes, sir.

Q. When you first answered Mr. Turkus as to your ability to be fair, you used the word that you would try to be fair, and you thought you could be fair; isn't that what you said?

A. Yes, sir.

Q. That was before his Honor addressed any question to you?

A. Yes, sir.

Q. When you said you would try to be fair, that implied there was a commitment in your mind, didn't it?

A. It did.

Q. When you said you thought you could be fair, that also implied a doubt in your mind?

A. It did.

Q. Now, what you read in the newspaper was concerning one or more of these defendants, irrespective of what case it was involved in; isn't that true?

A. Yes, sir.

Q. And it was directed toward one of the names of the [fol. 374] defendants in here, the articles which you read?

A. That is right.

Q. So that when you said your prejudice was not attached to the particular case, you had in mind, however, your prejudice was attached to one of the individuals connected with this case, wasn't it?

A. I don't think I said prejudice.

Q. Your impression was detrimental?

A. That is right?

Q. And you had in mind that this impression which you had formed was a prejudicial one against one of the defendants in this case by reason of what you read about him not connected with this case?

A. That is right?

Q. When you answered Mr. Barshay you further stated, didn't you, that because of what you had read you would re-

quire proof to remove the impression which you had in your mind?

A. I did.

Q. That was your state of mind only two or three minutes ago?

A. Yes, sir.

Q. Now, is it not a fact that because of this impression which you had gained and which you carried with you for how long a period of time—Let me interrupt the question—How long a period of time is it since you read these articles?

A. About a month.

Q. And you have carried that impression, which is prejudicial to one of the defendants, for a month?

A. Yes, sir.

Q. And you carried it while you were sitting in the court-room listening to the other jurors being questioned, and [fol. 375] you carried it while you were being questioned by Mr. Barshay—that is true?

A. Yes, sir.

Q. And is it not a fact that because of that impression which is, in its nature, detrimental to one of the defendants, that you, trying as you would to be fair, would require a greater amount of evidence either from the defense, or a lesser amount of evidence from The People, than you would otherwise require if you did not have that impression in your mind?

A. I don't think so.

Q. There is a doubt in your mind even now, isn't there; wouldn't you say? You say you "don't think so." that implies a doubt, doesn't it? So that there is even a doubt now in your mind as to whether or not, because of the adverse impression you gained as to one of these defendants, you would be able to require only the same quality of evidence you would require in a case where you had not that impression? Isn't there a doubt right now in your mind?

A. I would want to be fair and listen to the evidence.

Q. I am only questioning you—nobody can find fault with your state of mind—we are entitled to twelve fair and impartial jurors. Are you implying by your answer to my question a second ago that there was a doubt as to your ability, even as much as you would like?

A. Yes, sir.

Q. And you still have that doubt as to your ability to do so?

A. That is true.

[fol. 376] Mr. Rosenthal: I press the challenge. All defense counsel join in the challenge.

The Court: Is everybody through?

Mr. Barshay: Yes.

The Court: The trouble is, with this talesman, he says one thing and then another; then somebody else comes back and asks him the same thing and he changes his mind again. The Court is unable to find out from his answers whether he would be partial or impartial juror, and, taking that, in connection with his apparent unwillingness to serve, the Court lacks faith in the sincerity of the talesman's answers. The challenge is sustained.

Mr. Barshay: May we record an objection to your Honor's comment about his unwillingness to serve?

The Court: Supposing you take at this time a blanket objection to all the comments of the Court in the course of the trial. It will save a lot of time.

Mr. Barshay: Yes.

The Court: Because the attitude between Court and counsel throughout the trial should, if possible, at all times be dignified and marked with both respect and restraint. The Court is trying to do its part. Of course, in the heat of advocacy, counsel sometimes shouts an exception and sometimes adds a word of displeasure. That should be [fol. 377] avoided. We must treat one another with respect throughout.

MORRIS LEIBOWITZ, residing at 1005 Forty-fourth Street, Brooklyn, New York, No. 2803, was examined as to his qualifications to serve as a juror.

By the Court:

Q. Are you related to Mr. William Leibowitz, the lawyer?

A. No, sir.

By Mr. Turkus:

Q. Are you related to Judge Taylor's brother on the bench, Judge Leibowitz?

A. No, sir.

Q. Do you live in the Bay-Ridge Section of Brooklyn?

A. No, sir, you call that Borough Park.

Q. The trestle board lists you as manager, without any identification. What do you manage?

A. I am in the advertising novelty business. We make these cloth—painters' caps, which different painters wear on the job, with the advertisement of the paint concern on it.

Q. Do you supply those products to these painters?

A. Yes, sir.

Q. Do you come in contact with many painters in the painters' union?

A. No, sir.

Q. Does your business bring you in contact, or is the business with which you are connected—does it bring you in contact with people in the painting union?

A. No, sir.

Q. To whom are the products sold?

[fol. 378] A. To paint manufacturers and they, in turn, distribute them to the different stores.

Q. In other words, your business contact only brings you into association with different manufacturers of paints?

A. Yes, sir.

Q. That is the sole product you manufacture?

A. Yes, sir.

Q. Have you lived in the Borough Park section for a number of years?

A. Yes, sir, for about twenty-two years.

Q. Are you familiar with the nature of the charge in this case?

A. Yes, sir.

Q. Is there anything about the nature of the charge that would prevent or impair your service as a juror in the case?

A. No, sir.

Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Have you been in this business of manufacturing hats for a number of years?

A. Yes, sir.

Q. More than ten?

A. Yes, sir.

Q. Is your address in the neighborhood of 10th Avenue and 44th Street?

A. Yes, sir.

Q. Have you any familiarity with the name of Irving Feinstein?

A. No, sir.

Q. You don't know of any such person?

A. No, sir.

Q. Did you ever hear his name mentioned in any discussion around Borough Park?

A. No, sir.

Q. You lived in that section in 1939?

A. Yes, sir.

[fol. 379] Q. And you never heard the name of Feinstein mentioned?

A. No, sir.

Q. Did you ever read about Feinstein in the press?

A. No, sir, I did not.

Q. Did your business bring you at any time in contact with persons or firms in the Brownsville or East New York section?

A. No, sir.

Q. Did you ever have any contact of any kind, nature, or description in that area?

A. No, sir.

Q. Or in the Brooklyn waterfront area?

A. No, sir.

Q. Or in the garment district of Manhattan?

A. No, sir.

Q. Or the clothing district or the clothing truckers.

A. No, sir.

Q. Did you have any business with unions?

A. Yes, sir, we sometimes make caps for use in their May Day parade.

Q. What union is that?

A. We have made caps for the Cooks & Countermens Union uptown in Manhattan; we have made caps for the Electric Union.

Q. Was that Local No. 3 of the Electrical Union?

A. That is right.

Q. Do you remember the local number of these Cooks & Helpers?

A. No, sir, I do not remember that.

Q. Did you come in contact with any officials of these locals?

A. Not directly; these sales were made through our sales staff. We have salesmen to get that business, and we follow [fol. 380] the orders up.

Q. Are you manager of the sales division?

A. Manage everything in the place.

Q. In other words, you are general manager in charge of production and in charge of sales and distribution?

A. Yes, sir.

Q. And the men under you came in contact with various officials of these unions?

A. Yes, sir.

Q. Since your name appeared on the jury panel as a prospective juror, did anybody discuss the case with you?

A. No, sir.

Q. Did you have any discussion with anyone about your name being on the panel for a prospective juror in the case?

A. Well, there was no discussion, but I told a few friends of mine I was going on the panel when I originally received the notice, not knowing what case it was going to be.

Q. I mean since now you have been attending in court—I believe you reported in August.

A. Yes, sir.

Q. And since then was there any discussion about your service as a juror in the case?

A. No, sir.

Q. No one, inside or outside of your office?

A. No, sir.

Q. Do you know specifically the names of officials of unions that your firm and the men of your firm came in contact with?

A. No, sir.

Q. Would you know them if you heard the names?

A. I would not.

Q. Did you ever come in contact with any official of [fol. 381] the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Is the name Jacob Potofsky familiar?

A. No, sir.

Q. Are the names of officials Weinstein and Katz of the Amalgamated familiar to you?

A. No, sir.

Q. Would there be any embarrassment on your part to serve as a juror in this case because of business connections your firm had with these locals, the Electrical Union and the Cooks & Helpers?

A. No, sir.

Q. Is that a substantial business you do with these unions?

A. It is just that we get that one item a year, and in this past year we did not get the order.

Q. Is the name of Bruno Belia, organizer, of the home office of the Amalgamated, familiar to you? Does that name mean anything to you?

A. No, sir.

Q. Or Salvatore Marazzano?

A. No, sir.

Q. Do you know any persons or firms in the clothing industry?

A. No, sir.

Q. Or in the knee pants industry?

A. No, sir.

Q. Or in the Clothing Truckers?

A. No, sir.

Q. Have you lived in other sections of Brooklyn besides Borough Park?

A. No, sir.

Q. Have you heretofore served as a juror in a criminal or civil case?

A. No, sir.

Q. Is the name of Philip Orlofsky, one-time manager of the Clothing Cutters Union, Local No. 4 of the Amalgamated, at all familiar to you?

A. No, sir.

Q. Or of any official of Local No. 240 of the Clothing Drivers & Helpers Union?

A. No, sir.

Q. In the business you are in, do you ship and truck out your products?

A. Yes, sir.

Q. Do they go out through union truckmen?

A. Well, I don't know whether the man I do business with employs union truckmen.

Q. Did you ever have any contact, directly or indirectly, with anyone in the Flour Truckmens Union?

A. No, sir.

Q. Is the name Max Silverman of Local 138, familiar to you?

A. No, sir.

Q. Or Wolfie Goldis?

A. No, sir.

Q. Are you sure you never read about Feinstein?

A. Absolutely.

Q. Is the name William L. Alberts, a bondsman, familiar to you?

A. No, sir.

Q. Or the name Emanuel Buchalter, at all familiar to you?

A. No, sir.

Q. Or Phillie Buchalter, Phillie Kowas?

A. No, sir.

Q. Have you any familiarity with the names of Bellanca and Tosca?

A. No, sir.

Q. Or with Terry Burns?

A. No, sir.

Q. Do you know District Attorney O'Dwyer or any member of his staff?

A. I do.

Q. Do you know the Judge himself?

[fol. 383] A. Yes, sir; I am a member of the same political club with him.

Mr. Turkus: I don't think the defense will like that.

Mr. Cuff: That is not a fair statement, and I object to it.

Mr. Turkus: I withdraw it.

Q. Do you know him personally, the Judge?

A. Yes, sir, I have met him on several occasions.

Q. Would you be prejudiced in favor of the prosecution because you know the Judge?

A. No, sir.

Q. Would you be prejudiced against the defendant because you know Judge O'Dwyer?

A. No, sir.

Q. Do you know any other member of his staff?

A. Yes, sir.

Q. Who?

A. Mr. David Selzer, from Borough Park.

Q. Intimately?

A. Yes, sir, personally.

Q. Would that acquaintance—and I take it it is a long-time acquaintance with Mr. Selzer—

A. Yes, sir.

Q. Did you know him before he was an Assistant District Attorney?

A. Yes, sir.

Q. And you know him since he has been on Judge O'Dwyer's staff?

A. Yes, sir.

Q. Would you be prejudiced in favor of the prosecution because of your friendship with Mr. Selzer?

A. No, sir.

Q. Would you be biased or prejudiced against any of the defendants on trial because you know Mr. Selzer?

A. No, sir.

Q. Taking both of the facts together: Because of your [fol. 384] friendship and acquaintance with Judge O'Dwyer and Mr. Selzer, would there be anything in that relationship which would affect your deliberation on this case?

A. No, sir.

Q. With respect to the nine defense lawyers in this case: Do you know Mr. Barshay?

A. No, sir.

Q. Or Mr. Wegman, or Mr. Climenko?

A. No, sir.

Q. Do you know any members of their office staffs?

A. No, sir.

Q. Do you know Judge Talley, Mr. Cuff, or Mr. Kriendler, who represent the defendant Weiss?

A. No, sir.

Q. Do you know any member of their staff?

A. No, sir.

Q. Representing Capone are Mr. Sidney Rosenthal, Mr. Fischbein, and Mr. Rosenberg. Do you know any of those men?

A. No, sir.

Q. Or any persons attached to their staffs?

A. No, sir.

Q. Do you know any member of the bar who practices the defense of criminal cases as a specialty?

A. No, sir.

Q. Do you know William W. Kleinman or Mr. David Price?

A. No, sir.

Q. Or Mr. Saul Price, once an Assistant District Attorney in Manhattan?

A. No, sir.

Q. Are you in sympathy with the enforcement of the Penal Law of this state?

A. Yes, sir.

Q. You have no scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Would you permit the question of punishment to interfere with your deliberations in the jury-room?

A. I would not.

[fol. 385] Q. Because of your knowledge and acquaintance with Judge O'Dwyer, did you follow the O'Dwyer investigation in the press with any degree of interest?

A. No, sir, I did not.

Q. Specifically, did you read anything about the Rosen investigation, the Rosen case?

A. No, sir.

Q. In every aspect, will you take the law from Judge Taylor?

A. Yes, sir.

Q. And if selected, will you endeavor to work the problem out, the issue in the case, the question of guilt or innocence, and listen to reasonable argument from other jurors in the case?

A. Yes, sir.

Q. Do you start off now with any prejudice?

A. No, sir.

Q. You have prejudice?

A. No, I have not.

Q. So you do start out now as a prospective juror free from any prejudice?

A. That is right.

Q. Do you find any fault with the District Attorney of the county, Judge O'Dwyer, or with the prosecution of a case which employs accomplice testimony against the defendants on trial?

A. No, sir.

Q. With respect to the credibility of that type of witnesses, will you take the instructions of law from the Court?

A. Yes, sir.

Q. And the tests to be applied from the judge?

A. Yes, sir.

Q. You have no bias or prejudice against the prosecutor or against the prosecution for the use of that type of evidence?

[fol. 386] A. No, sir.

Q. With respect to the law of corroboration, the supporting evidence, will you take that exclusively from the Judge?

A. Yes, sir.

Q. If you are satisfied, after hearing the accomplice, if you are satisfied beyond a reasonable doubt from the supporting or other evidence in the case, that not only the accomplice is telling the truth but that there is supporting evidence tending to connect the defendants with the commission of the crime of murder in the first degree, if you are satisfied as to that beyond a reasonable doubt, would you hesitate to say so by a Guilty verdict?

A. No, sir.

Q. Do you know Mr. Geoghan, or any member of his staff?

A. No, sir.

Q. Have you any bias or prejudice against the use of expert testimony, be it handwriting, medical, ballistics, or any other type?

A. No, sir.

Q. Is there any reason concerning which I have not elicited any response, which goes to your ability to serve as a fair and impartial juror in this case?

A. No, sir.

Q. Will you apply common sense principles and the common knowledge that you get in your every-day business in weighing the issues in this case?

A. Yes, sir.

Q. Listen with common sense and understanding and reason to the other jurors in your deliberation?

A. Yes, sir.

[fol. 387] Q. Will you, if selected, endeavor to do justice in this case?

A. Yes, sir.

Q. Is there any reason in the world at all that if you are satisfied beyond a reasonable doubt that there are three guilty men at the bar of justice, Buchalter, Weiss, and Capone, that you will say so in your verdict?

A. There is not.

Q. And if you are satisfied as to their guilt beyond a reasonable doubt, will you say so in your verdict?

A. I will.

By Mr. Climenko:

Q. I don't remember whether Mr. Turkus asked you this question, but have you ever sat on a jury in a criminal or a civil case?

A. No, sir.

Q. Never before?

A. No, sir.

Q. This would be your first experience?

A. Yes, sir.

Q. So, of course, you never heard the Judge charge a jury?

A. I never did.

Q. Well, have you read about any of the defendants in this case?

A. I did not read about it, but glancing over the paper I did see some headlines, but I never read the article, just passed it by—found no interest.

Q. What paper do you read habitually?

A. The *World-Telegram* and the *News*.

Q. You said you never read any article that was written about any one of these defendants in either of those papers?

A. No, sir.

[fol. 388] Q. But you have seen headlines about them?

A. Yes, sir.

Q. You were here on August 4, 1941?

A. Yes, sir.

Q. Since that date have you seen mention of the names of any of the defendants in this case in the *News* or the *Telegram*?

A. I don't think I noticed any of them.

Q. You read those papers every day?

A. Yes, sir.

Q. You did not restrict your attention to any particular page, as, for instance, some people read only the sporting sheets, some people read only the Stock Market?

A. I usually read the war news and sports.

Q. That is all you read?

A. That is all.

Q. You have seen—you recall seeing the names of some of these defendants in both the *Telegram* and the *News* since August 4, 1941?

A. Yes, sir, that is right.

Q. You knew you were to return here on the 15th of September, 1941?

A. Yes, sir.

Q. You did not read any of those stories?

A. No, sir, I did not.

Q. Was your interest excited by the headlines?

A. No, sir, it was not.

Q. Had you, prior to August, 1941, read any stories about the defendant Buchalter?

A. No, sir.

Q. Never?

A. No, sir.

Q. When for the first time did you ever hear the name of Louis Buchalter?

A. When did I hear the name?

[fol. 389] Q. Yes, when first, do you recall it now, that you heard the name of the defendant Louis Buchalter?

A. The first time I heard the name mentioned was when Walter Winchell mentioned that fact over the radio.

Q. That was sometime in 1939?

A. Yes, sir.

Q. Since then you have not read any stories about him?

A. No, sir.

Q. You have no impression or opinion as to his innocence or guilt in this case?

A. I have not.

Q. Now, although you have not ever served as a juror in any case, you understand, do you or not, that the defendant is presumed to be innocent of the charge mentioned in the indictment; do you understand that?

A. Yes, sir.

Q. Do you understand also that the mere bringing of an indictment is not in any degree proof?

A. Yes, sir, that is right.

Q. As you sit there now, considering this matter, you assume the defendant Buchalter is innocent?

A. Yes, sir.

Q. And your mental attitude with respect to this case is that you would not yourself or with others bring in a ver-

dict of guilty unless the proof that is adduced here satisfied you and demonstrates guilt beyond a reasonable doubt?

A. That is right.

Q. And I think the Court, in announcing the law to you on this charge, defines reasonable doubt as a doubt for [fol. 390] which you could ascribe a reason. You would accept that as a proper definition of the law?

A. That is right.

Q. So that if the proof did not demonstrate guilt beyond a reasonable doubt, as I have just tried to explain reasonable doubt, you could not and would not agree to a verdict of guilty, is that correct?

A. That is right.

Q. You realize the trial of a case is a serious matter?

A. Yes, sir.

Q. It is not a trivial thing?

A. That is right.

Q. That your oath, if you take the oath to act as a juror, is a very serious commitment that you make with the community and the State in which you live?

A. Yes, sir.

Q. You would not allow any trivial matter to interfere with your faithful performance of that duty?

A. That is right.

Q. You know Mr. O'Dwyer?

A. Yes, sir.

Q. You have had the pleasure of shaking hands with him?

A. Yes, sir.

Q. That has been a pleasure, hasn't it?

A. Yes, sir.

Q. You have been impressed by the fact that a gentleman of his eminence is within the circle of your friendship?

A. Yes, sir.

Q. You are honored by the pleasure I assume you obtain by saying hello to him?

A. Yes, sir.

Q. Now, Mr. O'Dwyer is District Attorney of Kings County.

A. Yes, sir.

Q. And Mr. O'Dwyer may from time to time be actually [fol. 391] present in this court-room.

A. That is right.

Q. Have you seen him here within the last few days?

A. No, sir, I have not.

Q. Were Mr. O'Dwyer to be present during the course of this trial, would that, to any extent whatever, affect your ability to fairly try this case?

A. I don't think so.

Q. It would not, would it?

A. (No answer.)

By the Court:

Q. Are you a member of a political club?

A. Yes, sir.

Q. Are you an officer?

A. No, sir, I am an active member; in other words, I am active as far as going out and speaking to neighbors, and so forth, in my district.

Q. Are you a district captain?

A. Well, yes, from the 4th election.

Q. How long have you been a district captain?

A. Well, I have taken an active part since Magee became leader, after Wogan left.

Q. Are you president of the club?

A. No, sir.

Q. Are you there every night working?

A. No, sir.

Q. How often do you go?

A. Well, occasionally, when there are meetings; I do not attend every meeting.

Q. Are you on any campaign committee?

A. No, sir.

Q. Do you expect to take any active part in this campaign?

A. Yes, sir, in our locality.

Q. How about any club house that would bring you in [fol. 392] contact with Mr. O'Dwyer?

A. No, sir, that was arranged between a few of our own captains, to take an active part.

Q. You are not on any committee for Judge O'Dwyer?

A. No, sir.

Q. Are you a member of the General Committee, the County General Committee?

A. No, sir.

Q. That met to ratify the ticket?

A. No, sir, my wife was a member of the County Committee.

Q. Does she hold a political position?

A. No, sir.

Q. Is she an election inspector?

A. Yes, sir.

Q. Are you?

A. No, sir.

Q. Do you receive campaign funds as district captain?

A. We call that zone leader, who has charge of five or six districts, he receives the money and distributes it to the workers.

Q. Directly?

A. Yes, sir, we instruct him who to distribute it to.

Q. You give him the names and he distributes the money?

A. Yes, sir.

By Mr. Climenko:

Q. As I understood you to say, you have made speeches for Mr. O'Dwyer?

A. No, sir, I did not say I made speeches, but we intend to do some speaking in our own locality for the District Attorney. I am one of the workers who intends to do that.

[fol. 393] Q. Would you permit your political allegiance or your personal friendship to Mr. O'Dwyer to affect an honest, faithful, serious discharge of your duties as a juror, and by that I mean, among other things, primarily, the obligation to be an absolutely impartial juror?

A. What is that question?

Q. I will repeat it. You know Mr. O'Dwyer pretty well?

A. Yes, sir.

Q. You do not think Mr. O'Dwyer would want you to be anything except absolutely fair, were you to act as a juror in this case?

A. That is right.

Q. And Mr. O'Dwyer would not want any break in the case because you happened to know him and he happened to know you?

A. That is right.

Q. He would not want you to trifle with your oath, but to be absolutely impartial?

A. That is right.

Q. You would not permit that to trifle with your oath, even though at this moment Mr. O'Dwyer is a political candidate in the forthcoming election?

A. That is right.

Q. You would not permit that to trifle with your oath, even though you are interested in the election as a party worker?

A. That is right.

Q. You would not contemplate doing that for a minute?

A. That is right.

Q. And you know Judge O'Dwyer would not want you to do that?

A. That is right.

[fol. 394] Q. You have known Mr. Selzer for some time?

A. Yes, sir.

Q. He is an Assistant District Attorney?

A. Yes, sir.

Q. For how many years have you known him?

A. About ten or twelve years.

Q. And Mr. Selzer would not want you to be anything except impartial were you to act as a juror in a capital case?

A. That is right.

Q. And were you to act as a juror in this case, you know, as it will probably be charged you, that the defendants and each of them are presumed to be innocent?

A. That is right.

Q. And, as I said before, as you sit here now you assume that they, each of them, are innocent of the charge?

A. That is right.

Q. You have no prejudice whatever as against any of these defendants at this time?

A. That is right.

Q. You would listen to the testimony as it was given, without any prejudice as against any of these defendants?

A. That is right.

Q. Because you understand, if it is so charged, that these defendants are presumed to be innocent at all stages of the trial of this case until such time as it is finally committed to you for your deliberation?

A. That is right.

Q. You have heard Mr. Turkus refer to accomplices?

A. Yes, sir.

Q. Do you know what an accomplice means, as Mr. Tur-[fol. 395] kus used that word?

A. Yes, sir.

Q. Let us see if we mean the same thing by it—a witness who says he participated in the commission of a crime.

A. That is right.

Q. You said that you would not be prejudiced against the prosecution were it to employ that type of witness; is that right?

A. Yes, sir.

Q. Now, in assessing a group of witnesses, would you take into consideration any possible motive that the witnesses might have in giving their testimony?

A. What is that question?

Q. I withdraw it. In the ordinary course of your business you apply certain tests in deciding or passing upon for yourself the honesty or accuracy, or dishonesty or lack of accuracy, of any statement made by a person to you?

A. Yes, sir.

Q. You do that every day of your life?

A. Yes, sir.

Q. You do employ such rules?

A. Yes, sir.

Q. I suppose you will agree with me that one important rule you always invoke in your own mental assessment of the accuracy or lack of accuracy of the statement made to you is the motive of the speaker?

A. That is right.

Q. You can understand, I assume, that during the course of the trial of a case people take the stand and they make certain statements in response to questions?

A. Yes, sir.

Q. Questions put by either the prosecution or the attorneys for the defendants?

A. Yes, sir.

[fol. 396] Q. You understand, of course, that one of your fundamental duties, were you to be accepted as a juror, would be to pass upon the honesty or credibility of these statements?

A. Yes, sir.

Q. Now, in weighing the credibility of the testimony of an accomplice, so-called, would you take into consideration

the motive, if any, which that witness might have in so testifying?

A. Yes, sir.

Q. Would you, therefore, in assessing or testing the credibility of that witness, seek to find out if he had a motive, and would you be particularly careful in examining the truth or lack of truthfulness of his statement?

A. Yes, sir.

Q. And if the Court should charge you that it would be your duty as a trial juror to assess or weigh the credibility of the so-called accomplice with care, with great care, would you follow that rule as the Court gave it?

A. Yes, sir.

By Mr. Rosenthal:

Q. You understand the purpose of asking questions of you is to have a personal determination of your own mind, whether you think you can be a fair man on the jury?

A. Yes, sir.

Q. You understand, in the final analysis, you are the one that is going to raise your hand and swear that when you go into the jury room, after the case is over, that on your conscience you will deliver a true and just verdict?

A. That is right.

Q. So any questions that might be asked of you, I do not [fol. 397] want you to take any offense at; it is in order to enable you to better determine whether you can act as a fair man.

A. Yes, sir.

Q. Now, you have candidly stated that you are friendly with Judge O'Dwyer, you belong to the same club, and also know Mr. Selzer, but when you were asked by Mr. Climenko as to whether or not, if Judge O'Dwyer came in the room, it would have any influence, you said you did not think so, that is correct? Now, I will put it a little more strongly: Assuming that during the course of the trial Judge O'Dwyer, as is quite possible, and as he has a perfect right to do, being that he is District Attorney, may not only come in the room and sit around where he would be seen by the jury, but he might even associate himself, as he would have a perfect right to do, with Mr. Turkus or with any of the Assistants; now, would that have any

effect on your judgment because of your friendship with him?

A. I don't think it would.

Q. I do not want you to be doubtful. You heard me tell you a minute ago I wanted you to use your own mind. I do not want to use your mind for you. It is up to you. Imagine yourself sworn as a juror, imagine yourself sitting in the box, imagine someone, while the witness being on the stand, and Judge O'Dwyer not only sitting here, as he would have have a perfect right to do, questions some of the witnesses; would that have any effect on your judgment in going into the jury room, or would that sway you [fol. 398] one way or the other?

A. No, sir, it would not.

Q. So you want to change your "don't think so" and say positively that it would not affect your judgment?

A. No, it would not.

Q. You realize that, of course, Judge O'Dwyer, nor Mr. Turkus, nor any one of the lawyers, have any first-hand knowledge of any of this case? They are not witnesses?

A. Yes, sir.

Q. They are only presenting what has been told to them either by the prosecution witnesses or the defense witnesses?

A. Yes, sir.

Q. So that the entity of the lawyers should not enter into your deliberations.

Mr. Turkus: I object. It is not only what he has been told, but what investigation he makes.

Mr. Rosenthal: I object to a speech being made here. This has no effect upon this jury.

The Court: State nothing about what has been said, just put your ground for the objection.

Mr. Turkus: The objection is Mr. Rosenthal is telling a prospective juror and stating as a fact something that is not so, that we are presenting this case upon the basis of what we have been told. We are not.

The Court: It is a fair assumption that it is based upon alleged information. Objection overruled.

Q. Let me repeat the question. You realize the information that the lawyers get—and that is including the District [fol. 399] Attorney—is from witnesses to any episode

alleged to have occurred in the facts set out in the indictment or in the defense raised against it?

A. Yes, sir.

Q. So knowing that to be the fact, you would not permit your knowledge of any individual, whether he be associated with the District Attorney's office, including Judge O'Dwyer, or any of the defense counsel, to interfere with your deliberation when it is in your hands to determine whether the man is guilty or not?

A. That is right.

Q. That you are sure of at this time?

A. Yes, sir.

Q. Although before, when you said you did not think so, you had not yet assumed giving it sufficient thought to understand what was meant; is that correct?

A. Yes, sir.

Q. Now, do you belong to any men's club attached to any Hebrew institute?

A. No, sir.

Q. Have you ever heard any assistant of Mr. O'Dwyer make any speeches on crime?

A. No, sir.

Q. What you know about any of the defendants here is superficial knowledge you gained by hearing Walter Winchell talk over the radio or seeing some headlines in the newspaper?

A. Yes, sir.

Q. Your interest in reading newspapers, I take it, is, first see how the war is going on and then to pass to the sports?

A. Yes, sir.

Q. And skip over what is in between?

A. Yes, sir.

That being so, you haven't any prejudice of any character at this time, as you sit here, against any of these individuals, have you?

A. No, sir.

Q. You have no impression that is unfavorable as to any of them?

A. No, sir.

Q. You realize that when a man is charged with committing a crime he only prepares himself, under our law, to meet that particular charge?

A. That is right.

Q. So that when the District Attorney, by indictment or through notice, charges that these men participated in the perpetration of the crime of killing this man Rosen, that is what we are here to meet?

A. Yes, sir.

Q. And that is what he must prove to your satisfaction beyond a reasonable doubt before you will bring in a verdict of Guilty?

A. Yes, sir.

Q. Do you realize, never having been on a jury before, that the defendant at no time, under our laws, is compelled to even open his mouth or say anything?

A. Yes, sir.

Q. In fact, even if they were not to put on a witness to rebut anything that was said by the District Attorney's witnesses, you still could not draw an unfavorable impression—I don't say it is going to be the case, but that is how far the law goes.

A. Yes, sir.

Q. So, if you are called as a juror, you are willing to state now that you can conscientiously determine what weight you are going to give from what you hear from the People's [fol. 401] witnesses, irrespective of whether there is any defense, and render a true and a just verdict.

A. Yes, sir.

Q. You have been told by Mr. Turkus that accomplices are going to take the stand, whether it be in the singular, "accomplice," or "accomplices"—you understand from what you have heard in the court-room that no man can be convicted upon the uncorroborated testimony of an accomplice? You heard that?

A. Yes, sir.

Q. You find no quarrel with that?

A. No, sir.

Q. In fact, you have heard also stated that even if there were ten accomplices telling the same story, a man cannot be convicted on that testimony alone?

A. That is right.

Q. You do not find any fault with that?

A. No, sir.

Q. You have heard discussions before you became a prospective juror as to the fact that accomplice testimony must be scrutinized very closely and very carefully, hav-

ing in mind what motive he may have and the interest he may have, and all the other surrounding things, to make him tell the story he is telling?

A. Yes, sir.

Q. You are going to apply the test if you are accepted?

A. Yes, sir.

Q. Now then, you have also heard discussed, I assume, if you were close enough, even though the acoustics are bad here, regarding the fact that there must be other evidence tending to connect the defendant with the crime, even assuming you believe the accomplice, you could not convict [fol. 402] the man unless there was other evidence tending to connect the defendant?

A. Yes, sir.

Q. You might go into the jury room and say to yourself, "Well, the accomplice told the truth, in my opinion," but then, if the Court were to charge you that even if you believe that you still could not convict unless and until you found some other evidence tending to connect the particular defendant with the crime, you would not find any fault with that proposition at all?

A. No, sir.

Q. You would ferret down and look through the evidence and seek out and find out whether there was any other believable testimony to connect the defendant?

A. That is right.

Q. Now, again, you might come to the question, and as I stated to one of the other prospective jurymen, there is no way I know now whether we could direct our questions to a particular point and leave other points out——

A. Yes, sir.

Q. You might come to the question that some other man who admits he is a murderer, who has murdered people and done numerous other things, might say that one or more of these men admitted to him that they had committed the crime.

A. Yes, sir.

Q. If such a condition were to arise, you would have the right to weigh what particular motive that particular individual might have in making such a statement; is that clear?

A. Yes, sir.

Q. And you would have a right, for instance, he has pos-
[fol. 403] sibly committed, admittedly, some crime for which
he has not been prosecuted—possibly he has some ill feel-
ing toward the particular individual he is making the
charge against—all these things might happen—you would
have the right to determine whether you believed such
admission or alleged statement by determining who it is
who made the statement and the manner in which he
made it?

A. Yes, sir.

Q. That you would do?

A. Yes, sir.

Q. You have been asked by Mr. Turkus that assuming you
were to listen to all of the evidence and were finally to come
to the conclusion that The People have proven their case
beyond a reasonable doubt, would you hesitate to find a
verdict of guilty?

A. Yes, sir.

Q. And you properly said that you wouldn't?

A. Yes, sir.

Q. Now let me ask you the question that, irrespective of
what you have heard and irrespective of what you read, if in
your mind you were satisfied at the conclusion of this case
that any one or all of these defendants are not guilty, would
you, because of what you have heard or read, or the things
you have heard in the court-room about the bias of some of
these men who have been excused, or their prejudice, would
you, because of that, be afraid to come in and under your
oath say "Not guilty"?

A. I would not.

Q. You understand you are trying these men together
for convenience and that each one is entitled to a separate
verdict?

[fol. 404] A. Yes, sir.

Q. Each one is entitled to a separate deliberation on the
evidence in so far as it affects the particular individual?

A. Yes, sir.

By Mr. Barshay:

Q. You stated you were an intimate friend of Mr. Selzer?

A. Yes, sir.

Q. Since you received a notice to appear on this jury did
you see Mr. Selzer?

A. No, sir.

Q. Have you spoken to him by phone?

A. No, sir.

Q. Have you spoken to his family by phone?

A. No, sir.

Q. Has his family visited you?

A. No, sir.

Q. Was there any communication between you and Mr. Selzer, his family or himself, directly or indirectly, with respect to your being on the jury in this case?

A. That is right.

Q. Did you ever go out with Mr. Selzer when he was on homicide cases in various precincts?

A. No, sir.

Q. So that with respect to Mr. Selzer, as far as you know, there is no knowledge on his part that you are here?

A. That is right.

Q. And it would not make any difference one way or the other?

A. No, sir.

Q. I don't know whether Mr. Rosenthal asked you, but did you ever hear Judge O'Dwyer speak on the subject of crime?

A. No, sir.

Q. In your association?

A. No, sir.

[fol. 405] Q. Or at no place at all?

A. No, sir.

By Mr. Rosenthal:

Q. I ask you, Mr. Leibowitz, I asked one of the other members the same question, assuming it develops in the trial that one or more of these defendants may have known some of The People's witnesses, may have even been in their company at times, would that fact alone in any wise prejudice you against them so you would be apt to find a verdict of guilty simply because of that fact?

A. No, sir, it would not.

Q. You realize you know a lot of people too?

A. Yes, sir.

Q. Some good and some maybe bad?

A. Yes, sir.

By Mr. Barshay:

Q. The attitude you have maintained throughout is that you are absolutely free of bias or prejudice against any of these defendants?

A. That is right.

Q. Now, sir, if it should develop from this witness stand that the defendant whom we represent, Mr. Louis Buchalter, is at present serving a sentence of not less than 44 years and not more than 70 years in a Federal prison, would that fact prejudice you against this defendant?

A. No, sir.

Q. You are positive of that?

A. Yes, sir.

By Mr. Turkus:

Q. Would the fact that Lepke Buchalter is serving that term—

Mr. Barshay (interrupting): The question is objection- [fol. 406] able in its inception as to our client's name. Our client's name is Louis Buchalter.

Mr. Turkus: His alias is Lepke.

Mr. Barshay: You have not proved it as yet, and you have no right to say it. It is said with the intention of prejudicing not only this juror but the prospective jurors who are listening. I have a serious objection to that. It is [fol. 407] deliberate on the part of the District Attorney to do that. We refrained from it. We have not opened the door. The indictment is in the name of Louis Buchalter, and deemed to be so until you present such proof; but until such proof you should be fair.

Mr. Turkus: The indictment alleges "Louis Buchalter, alias Lepke." We have had that out before your Honor on other occasions. The sensitivity of Mr. Barshay is hard to understand.

Mr. Barshay: I am protecting my client's rights. I am not sensitive about anything.

Mr. Turkus: He has been known as Lepke for years, not only to the People but to the witnesses.

Mr. Barshay: That is a matter of proof for you.

The Court: This is a brawl. Just call him Buchalter, and there will be peace in the family.

Mr. Barshay: Mr. Buchalter.

Mr. Turkus: I will not call him "Mr." I will call him Buchalter.

The Court: I would suggest you do not ask that question impulsively; be very careful.

Mr. Turkus (to talesman:) Would the fact of what Buchalter is presently serving deter you from finding him guilty of murder in the first degree if you were satisfied upon the evidence in the case beyond a reasonable doubt that he is a killer?

Mr. Barshay: I object to the form of the question.

[fol. 408] The Court: It has no specific application to this indictment.

Mr. Barshay: Your Honor, I am constrained to make a motion for the declaration of a mistrial.

Mr. Talley: All of the defendants join in that motion.

The Court: Motion denied. Exception to defendants.

By the Court:

Q. Would that affect your verdict in this case one way or the other?

A. It would not.

Q. You would judge him on the evidence in this case on this charge?

A. That is right.

Q. Regardless of whether he has served a sentence on conviction for another crime?

A. That is right.

By Mr. Turkus:

Q. Regardless of whether he has any appeal pending or not from the conviction that Mr. Barshay spoke of?

A. That is right.

Q. Now, there is just one thing I want straight. Some of the questions and answers did not reach me that you discussed with the Judge. If I heard correctly, you are presently working in Judge O'Dwyer's behalf?

A. Yes, sir, in the Borough Park section.

Q. Did I hear you correctly in saying you intended to make some speeches in his behalf?

A. Yes, sir.

Q. I want to be very fair with the situation. Could you [fol. 409] in any wise have your judgment in the case

affected one way or the other by that association with Judge O'Dwyer?

A. No, sir.

Mr. Turkus: Talesman is satisfactory.

Mr. Baishay: He is satisfactory to all counsel, in accordance with the arrangement we made before.

The Court: The juror will be accepted tentatively but not sworn, as indicated this morning. He may sit in the first seat.

(Mr. Leibowitz occupies Seat No. 1 in jury box.)

CHARLES GOLDMINZ, No. 2713, residing at No. 44 Sea Gate Terrace, Brooklyn, New York, was then examined as to his qualifications as a juror.

By Mr. Turkus:

Q. Is Sea Gate Terrace in Sea Gate, in the Borough of Brooklyn?

A. Yes, sir.

Q. Do you know Mr. William Kleinman?

A. No, sir.

Q. Do you know Mr. Max Silverman?

A. No, sir.

Q. Your business is listed as that of manager. What is it?

A. G. & G., wholesale grocers.

Q. Does your business bring you in contact with persons or firms in the Brownsville or East New York area in Brooklyn?

A. The business does, yes, sir.

Q. Daily?

A. Daily.

Q. How many years have you been going in that district?

[fol. 410] A. I have not been going there, the trucks have.

Q. Are you in general charge of distribution?

A. I am.

Q. In other words, you are the concern?

A. Yes, sir.

Q. Do your trucks go in the East New York section of Brooklyn?

A. Yes, sir.

Q. Do you have any contact in or about the garment district or the clothing district?

A. Nothing in Manhattan.

Q. Or on the Brooklyn waterfront?

A. Picking up.

Q. You pick up stuff there and then bring it to your factory?

A. To my warehouse.

Q. Has that been going on for a number of years?

A. Yes, sir.

Q. Have you heard discussions about Judge O'Dwyer in this case?

A. No, sir.

Q. Have you read about it in the newspapers?

A. No, sir.

Q. Have you any contact, directly or indirectly, with the Brownsville or East New York area besides deliveries made to people there?

A. No, sir.

Q. Do you have any connection whatever in that area?

A. Not as I can say, no, sir.

Q. Or in the garment district in Manhattan, or the clothing district?

A. No, sir.

Q. Or with clothing truckers?

A. No, sir.

Q. Or with the Amalgamated Clothing Workers of America Union, New York—do you know any of the officials?

A. No, sir.

Q. Do you do business with unions?

A. Yes, sir.

[fol. 411] Q. The trucking unions?

A. I would not call them trucking unions, no, sir.

Q. What kind of unions are they?

A. The teamster's union; they don't do any trucking for me.

By the Court:

Q. Where is the G. & G.?

A. 15 Washington Avenue, corner of Flushing.

Q. That is the old Von Glahn building?

A. In Wallabout Market; no, sir.

Q. On which corner is it?

A. Right next to Rockwell's.

By Mr. Turkus:

Q. As far as you can recall, you have no contact directly or indirectly with any person or firm in the garment clothing district or in the clothing trucking industry, in Brownsville or East New York, except in so far as your own products are delivered there?

A. That is right.

Q. Do you understand the nature of the charge in this case?

A. Yes, sir.

Q. Is there anything about the nature of the charge which would preclude you from being a fair and impartial juror?

A. No, sir.

Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. None.

Q. In the event this trial is protracted, would there be anything about a protracted duty which would interfere— [fol. 412] A. That is the question, it might interfere.

Q. Since your name appeared on this jury panel did anybody speak to you about the case?

A. No, sir, except my wife.

Q. That was as to your prospective jury service?

A. Yes, sir.

Q. There was no discussion as to the merits of the case?

A. No, sir.

Q. Have you served before as a juror in any case?

A. No, sir.

Q. Civil or criminal?

A. No, sir.

Q. Do you know any official of the Amalgamated Clothing Workers of America—I think I started interrogating at that point when I was interrupted before—do you know any officials in that union?

A. None.

Q. Is the name of Jacob Potofsky, an officer of the Amalgamated Clothing Workers of America a familiar name to you?

A. No, sir.

Q. Is the name of Murray Weinstein, manager of the Clothing Cutters Union, Local No. 4 of the Amalgamated, a familiar name to you?

A. No, sir.

Q. Is the name Abraham Beckerman, one of the joint board, a familiar name?

A. No, sir.

Q. Is the name of Sam or Samuel Katz, business agent of Local 41, Clothing Cutters Union, familiar to you?

A. No, sir.

Q. Do you know anybody in the knee pants business?

A. No, sir.

Q. Or in any clothing branch of the industry?

A. No, sir.

[fol. 413] Q. Did you ever hear the name of Bruno Belia, an organizer for the Amalgamated?

A. No, sir.

Q. Or the name of Salvatore Narazzano?

A. No, sir.

Q. Local No. 240 of the Clothing Drivers and Helpers Union?

A. No, sir.

Q. Do you know any official of that union?

A. No, sir.

Q. You did say something about the Teamsters Union, it having some effect on your business?

A. Yes, sir.

Q. Does your firm do business with the Teamsters Union?

A. Yes, sir, I do.

Q. If the name of somebody associated with the Teamsters Union was to come out in this case, would you be embarrassed in your jury service?

A. Absolutely not.

Q. Do you know any officer of the Flour Truckmens Union?

A. I heard you mention before 138 of the Flour Truckmens. That sort of struck home; that is the Teamsters Union, but I don't know of any 138 Flour Union.

Q. Your description is more correct than mine—138 of the Teamsters Union.

A. That is right.

Q. Do you know any officials of that union?

A. I only know the delegates, one or two.

Q. What is the name of the delegate?

A. One is Philip Wachtel and Abie Feller.

Q. Did you ever hear the name of Max Silverman?

A. No, sir.

Q. Or that of Wolfie Goldis?

A. No, sir.

[fol. 414] Q. Would your acquaintance with Wachtel and Feller be embarrassing to you in the discharge of your duties in this case if the names of those union officials should come out?

A. No, sir.

Q. Do you know Wachtel intimately?

A. No, sir, just in a casual business way.

Q. This man Feiler, whose name you gave, how well do you know him?

A. Only as a delegate.

Q. Since your name appeared on the panel as a prospective jurymen, has anybody spoken to you about the case?

A. No, sir.

Q. Is the name Philip Orlofsky, one-time manager of Local No. 4, Cutters Union, familiar to you?

A. No, sir.

Q. Or the name of William Alberts, a bondsman?

A. No.

Q. Or Emanuel or Philip Buchalter?

A. No.

Q. Do the names Bellanca or Tosca mean anything to you?

A. No, sir.

Q. Or Cashel?

A. I heard the name mentioned.

Q. When did you hear that?

A. I don't know; that was sometime during negotiations for a new contract. Cashel, head of the Amalgamated?

Q. No, you had negotiations with the Teamsters Union?

A. Yes, sir.

Q. When they were securing a contract?

A. That is right.

Q. What is that, a yearly contract?

A. Yes, sir.

Q. The carting of produce, is that a necessary and [fol. 415] integral part of your business?

A. No, sir, not produce; groceries.

Q. What does "G. & G." stand for?

A. Grittmann & Glass.

By the Court:

Q. How long have you been there?

A. About eighteen years.

Q. What particular trade do you sell?

A. All grocers—anything, like canned goods, your Honor.

Q. Do you have your own plant?

A. Yes, sir.

Q. Are you jobbers?

A. Jobbers.

Q. You are manager of what department?

A. All departments except the office.

Q. That is, you have delivery contact?

A. Yes, sir.

Q. You have supervision of the shipping clerks?

A. Yes, sir.

Q. And the receiver?

A. Yes, sir.

Q. And the stock?

A. Yes, sir.

Q. Are you an officer of the corporation?

A. No, sir.

Q. How long have you been with them?

A. Six years.

Q. You started in what capacity?

A. As selling, on the floor.

Q. As a salesman?

A. Yes, sir.

Q. How many street numbers does that building occupy?
I am trying to find out the street distance.

A. We were formerly at 36, 38, 40, and 41 Wallabout market and the Government took over that property so we had to get another place. 59 Washington Avenue is a five-story building.

Q. That is a narrow building?

A. It is 45 by about 125 on the first floor and then gradually—

[fol. 416] Q. The delivery platform is in the back of the building?

A. No, sir, in the front of the building, on Washington Avenue.

Q. Is that something new?

A. No, that has been there quite a while.

Q. How tall a building is it?

A. Five stories.

Q. All of the stock is carried in that building?

A. Yes, sir.

Q. You have no other warehouse?

A. No, sir.

Q. How many employees are there?

A. All told——

Q. Outside of the truckmen.

A. About eight or nine.

Q. That includes the office?

A. Yes, sir.

Q. Then it is comparatively a small business for a wholesale house?

A. We do an average of three-quarters of a million dollars. There are many smaller ones than we are.

Q. I do not ask these questions to embarrass you, but to see how you could have contacted with the people that the prosecution asked you about.

By Mr. Turkus:

Q. How many trucks are used by your firm?

A. We have one we call our own, but we have other truckmen picking up and delivering.

Q. You use this truckman who has contact with the teamsters union?

A. No, sir, that is one; all of our men inside belong to the Teamsters Union.

Q. So that every employee of yours is a member of that Teamsters Union?

A. Not the office, all the male employees.

[fol. 417] Q. The female employees are not connected with that union?

A. No, sir, no union.

Q. Are you a member of the Teamsters Union?

A. No, sir.

Q. Are you an officer, or do you have a financial interest in that firm?

A. I have a little financial interest.

Q. Do you know Judge O'Dwyer, the District Attorney of this county?

A. No, sir.

Q. Do you know any member of his staff?

A. No, sir.

Q. Do you know former District Attorney Geoghan or any member of his staff?

A. No, sir.

Q. Did you know Mr. Barshay when he was a member of Mr. Geoghan's staff, or do you know him now?

A. I do not know him now.

Q. Do you know Mr. Wegman or Mr. Climenko?

A. No, sir.

Q. Or anybody connected with their office—they are counsel for the defendant Buchalter.

A. No, sir.

Q. Have you any acquaintance with Judge Talley, or former Assistant District Attorney Cuff, or former Assistant United States Attorney Kriendler, who represent the defendant Weiss?

A. No, sir.

Q. Do you know anybody in their respective law offices?

A. I do not.

Q. Do you know Mr. Sidney Rosenthal or Mr. Fischbein or Mr. Rosenberg, who are counsel for Capone?

A. No, sir.

Q. Do you know anybody in their respective law offices?
[fol. 418] A. I do not.

Q. Have you lived in Sea Gate for a number of years, in the Gate?

A. Practically the Gate, on the bay side; I should say about six years.

Q. That is actually in the Sea Gate colony?

A. Yes, sir.

Q. And you never heard of Mr. William W. Kleinman or David Price?

A. No, sir.

Q. Or the name of Max Silverman?

A. No, sir.

Q. How long have you been doing business with Wachtel?

A. I think about three or four years.

Q. Have you ever been a witness in any kind of litigation?

A. Yes, sir.

Q. Have you ever been a party to a litigation?

A. No, sir.

Q. Have you ever been a witness in a criminal investigation?

A. No, sir.

Q. As the witness in the civil litigation, in connection with what?

A. No, sir, it was in the separation of a business.

Q. An outgoing partner?

A. Yes, sir.

Q. Do you know any member of the bar who is a specialist in the defense of criminal cases?

A. No, sir.

Q. Will you take the law in all of its aspects from the Judge, if you are accepted as a juror?

A. Yes, sir.

Q. As you sit in the box, are you free from all prejudice against the defendants?

A. I am.

Q. You have no prejudice for them and no bias against them?

[fol. 419] A. That is right.

Q. Do you have any bias or prejudice against the prosecutor of the county, Judge O'Dwyer, or against the prosecution of a case wherein the testimony of an accomplice is used?

A. I have not.

Q. Would you close your ears and shut your mind to the testimony of such an individual solely because he was a participant in the crime?

A. No, sir.

Q. Would you expect the District Attorney to bring witnesses from some city of learning?

A. They must know about the case.

Q. If you are satisfied that the accomplice who testifies in the case not only knows about the case, but knows about the defendants' implication in it and tells us about it, and then there is other evidence in the case showing the accomplice is telling the truth, and other evidence tending to connect the defendant with the commission of murder, and you are satisfied of that beyond a reasonable doubt, would you hesitate to say so by finding a verdict of guilty?

Mr. Cuff: I object to that as being an incorrect statement of law—"other evidence."

The Court: Objection overruled.

Mr. Cuff: Exception.

A. I would not.

Q. Do you have any bias or prejudice against the use of expert testimony, that is, the testimony of an expert on [fol. 420] medicine, handwriting, ballistics, or whatever it may be?

A. If he is a proven expert, no.

Q. You have no bias against his testimony?

A. No, sir.

Q. Is there anything concerning which I may not have inquired which goes to your qualification as a juror in the case?

A. I don't think so.

Q. Do you feel as you sit in the jury box that your mind is free and open and you can decide the case upon the evidence?

A. Yes, sir.

Q. Free from prejudice against the defendants?

A. Yes, sir.

Q. Should any defendant or any one of the defendants, or any one or more of them enter a defense of an alibi, or some other defense, will you take the law exclusively from the Judge?

A. I will.

Q. I think you said you know none of counsel, either on the District Attorney's side or on the defense side?

A. That is right.

Q. You have no embarrassment or reluctance in serving?

A. None, once I am in.

Q. If accepted, will you endeavor to work in harmony with the other jurors, listen to reason, reasonable argument and discussion—you will listen to reason and common sense?

A. Yes, sir.

Q. Now, suppose you have heard all the evidence in the case; you have heard the defense lawyers sum up to the [fol. 421] jury, stating the inferences they draw from the testimony, and you hear the prosecutor tell the inference he draws, and the learned Court charges on the law, and after due deliberation with other members of the jury you are satisfied beyond a reasonable doubt that we have three

guilty men at the bar of justice, will you say so in your verdict?

A. Yes, sir.

Q. Will you say so without fear or hesitation?

A. Absolutely.

Q. Is there anything in your business connections or background in life that would in any wise interfere with the rendition of that kind of a verdict if you feel it is in consonance with the evidence?

A. None whatever.

By Mr. Barshay:

Q. You said you did not know anybody at all connected with the defense or the prosecution?

A. That is right.

Q. I ask you if you have in mind you do not know police officials either, who may be connected with the case?

A. That is right.

Q. So that the people you know, none at all have anything to do with this case?

A. That is right.

Q. No doubt about it?

A. Yes, sir.

Q. Do you recall when this case is alleged to have happened?

A. I don't remember.

Q. You never heard of it?

A. Never heard of it.

Q. As you sat here for three days and heard the prospective jurors being questioned, did you form any impression one way or the other with respect to this case?

A. I did not.

Q. Did you form any idea as to how you shall answer questions when called?

A. I did not.

Q. You do not know any of the other jurors here?

A. No, sir.

Q. Did you read about the case at any time?

A. I did not bother much about it at all; I had other business worries.

Q. That were more important?

A. Yes, sir.

Q. Do you read the *Mirror*?

A. No, sir, I do not read the *Mirror*.

Q. Or the *Journal*?

A. No, sir.

Q. Did any member of your family ever discuss this case with you?

A. Just only since the time I knew it was the Lepke case.

Q. You have no prejudice against our client?

A. Absolutely none.

Q. You said you knew Philip Wachtel?

A. Just through the business.

Q. Have you seen him lately?

A. No, sir.

Q. When did you last see him?

A. The last time I saw Phillie Wachtel I think it was about quite a number of months ago; some sort of a dispute on agreements.

Q. Do you know now that he is no longer connected with the Teamsters Union?

A. No, sir.

Q. Did he ever talk to you about any business he may have had with the District Attorney's office?

A. No, sir.

[fol. 423] Q. Or with respect to his friendship for Mr. Rooney or Mr. Math of that office?

A. No, sir, I never cared to know his business.

Q. And he never volunteered?

A. No, sir.

Q. At no time did he tell you he had anything at all to do with them?

A. No, sir.

Q. Would the fact that a person has been shot raise any prejudice in your mind against any of the defendants?

A. No, sir.

Q. No doubt about that?

A. No doubt at all.

Q. Do you know anybody on the Grand Jury in the Borough of Brooklyn?

A. No, sir.

Q. Do you know anybody who was ever a special juror?

A. No, sir.

Q. Now we are assured that you know none of the facts and that you know none of the people that may be involved in this case?

A. That is right.

Q. Do you know what an indictment is?

A. Something you are accused of.

Q. An indictment is an accusation against someone; in this particular case it is against these defendants. It is only an accusation and nothing else?

A. Yes, sir.

Q. You cannot proceed on the theory that wherever there is smoke there must be fire?

A. That is right.

Q. You file an indictment and that is how you start a [fol. 424] trial? The defendant came in and he said "Not guilty," and so did the other defendants; that is what brings this case to you, and you are chosen to decide. We start off at scratch.

A. Yes, sir.

Q. We are seeking, to be frank with you, twelve jurors who will be eminently fair; we do not want an acquitting or a convicting jury; we want a fair jury in this case.

A. I understand.

Q. So that you find no fault with any counsel here who stood here for a long time questioning prospective jurors?

A. That is right.

Q. Now, we have nine lawyers sitting at the table. Does that influence you against any of these defendants?

A. Absolutely not.

Q. As a matter of fact, I think that is the customary procedure in this court in most cases, that when a man is charged with homicide the Court supplies him three lawyers.

Mr. Turkus: I object to that.

The Court: Only when they have no money to employ lawyers.

Q. So the number of lawyers has nothing to do with it?

The Court: That is not in this case.

Q. Well, whether they have money to hire or not is not important.

A. That don't bother me.

Q. If you are chosen as a juror and you see a person take the stand and that person raises his right hand and swears to tell the truth, and he is presented as a witness [fol. 425] by the District Attorney, be he expert, policeman,

detective, officer, or a plain individual, the fact that he is offered by the District Attorney would not influence you to the point where you might say to yourself, "That fellow must be telling the truth," would it?

A. Unless he is corroborated.

Q. In other words, the mere fact a man raises his hand and says he is telling the truth does not mean that he is?

A. That is right.

Q. You will decide whether he does or does not?

A. That is right.

Q. One of the tests you will use in determining a man's credibility—that means whether or not he is telling the truth, rests with you?

A. Yes, sir.

Q. If he is a clean man and has no interest in the outcome of the case, that is one thing?

A. Yes, sir.

Q. If he is a man who, out of his own mouth, says he is not a clean man, that is another thing, and the dirtier record he has that will come from the witness stand, the more carefully and cautiously you will weigh the testimony?

A. Yes, sir.

Q. And if some man takes the stand and it is brought out here that he himself admitted before that he had disrespect for an oath and committed perjury, you are going to weigh with caution that man's testimony?

A. Absolutely.

Q. And if it develops that that same man tells you, voluntarily, that he is a thief, a burglar, a gun toter, and a participant in murder, the more he says those things, the more caution you shall use in weighing his testimony?

A. Yes, sir.

Q. If twenty men take the stand and corroborate that person, and they are no better than he, you will weigh their testimony with extreme caution too?

A. Absolutely.

Q. Numbers do not count at all?

A. That is right.

Q. If the District Attorney calls fifty witnesses and we do not call one, that would not matter if you did not believe any one of those witnesses?

A. That is right.

Q. If, in addition to those things I have described, there shall be people who will say they are accomplices, you will

still use more caution with respect to accepting that man's testimony?

A. Yes, sir.

Q. If the Court shall tell you that every defendant is presumed innocent, now, that is not just language, that is the right of every person accused of crime, that is his substantial right, that is not a privilege that is given to us, it is something no person living can take away from us. That presumption is this: Until twelve men have decided unanimously that the District Attorney has proven the defendant guilty beyond a reasonable doubt—there is no doubt about accepting that law if the Court charges you?

A. Absolutely.

Q. The law gives the defendant another right and says the District Attorney must sustain the burden throughout the case and it never shifts to the defendant to any degree [fol. 427] whatever, and if the defendant should remain absolutely silent, you must not draw an unfavorable inference against that defendant. You do not find any fault with that law?

A. No, sir.

Q. You would not expect the defendant to explain anything at all?

A. No, sir, if he did not care to.

Q. The fact of his silence would not influence you?

A. No, sir.

Q. On the question of corroboration, let us assume that you have now weighed carefully the testimony of those people whom the District Attorney has described as accomplices. You will want to know who they are, who gave the corroboration that tends to connect any given defendant with the commission of this crime. He, too, is a witness. You want to find out from that witness, who is he—Why shall we take his word for what he says? Let us look into his record. And if you find that one of these men, not an accomplice, but one of these men who says, "I am coming here to give evidence which tends to connect the defendant with the commission of the crime," out of his own mouth says to you under oath, "I myself have committed eleven murders," you will weigh his testimony with a great deal of caution?

A. Absolutely.

Q. And you will say to yourself, "What reason has that man to give such testimony here?" won't you?

A. Yes, sir.

Q. You will put it through the mill and grind it finely?

A. Yes, sir.

[fol. 428] Q. If, in addition to that man, they will offer another man, not as an accomplice but as a person who gives testimony tending to connect the defendant with the commission of the crime, or any of them, and he says, "I have committed six murders," you will want to find out why he is giving such testimony?

A. That is right.

Q. You know this murder is alleged to have occurred in 1936?

A. I do not know when it occurred.

Q. Well, it was in September, 1936. You are going to ask yourself why that person remained silent all this time, and, if he gives evidence tending to connect any one of these defendants with the commission of the crime?

A. That is right.

Q. You will render judgment individually with respect to each defendant in this case?

A. Yes, sir.

Q. You will use the evidence given against one man, and only as against him, unless his Honor shall charge otherwise?

A. Yes, sir.

Q. You are giving each defendant in reality a separate trial?

A. Yes, sir.

Q. Now, in a case of this prominence a juror must have courage one way or the other. You said to the District Attorney you have the courage, if you are convinced beyond a reasonable doubt?

A. Yes, sir.

Q. Do you think you have the courage that if you are not convinced beyond a reasonable doubt, to acquit our defendant?

A. — —.

[fol. 429] Q. And if you think that, on the evidence, you yourself, after listening and answering arguments, but not being stubborn in any respect, after sifting the evidence and the people who gave it, you find a reason for doubt in this case (you will then have the courage to say "Not guilty"?)

A. That is right.

Q. And if all the other eleven should be contrary, without being obstinate or stubborn, you talking to them and listening to their arguments, are still not convinced beyond a reasonable doubt—

A. (interrupting): I would still say, "Not guilty."

Q. Only then would you be living up to your oath as a juror; do you understand that?

A. Yes, sir.

Q. If it shall develop in this case that Mr. Louis Buchalter is now under sentence of the Federal Court and the State Court, the minimum of which is forty-four years and the maximum of which, I think, is seventy years, would that fact prejudice you against him in any respect?

A. Absolutely not.

Q. No doubt about it?

A. No doubt.

Q. So now you are ready to say, if chosen, that you can render a verdict in this case which shall reflect the truth, based upon only the evidence in this case which you believe?

A. That is right.

Q. No doubt about it?

A. No doubt.

By Mr. Rosenthal:

Q. I represent the defendant Capone, together with Mr. Rosenberg and Mr. Fischbein; do you understand that?

A. Yes, sir.

[[fol. 430] Q. I don't know whether you were seated in a place where you could hear all the questions I addressed to Mr. Leibowitz or not. Could you hear me?

A. Yes, sir. I was right behind you.

Q. Now I will try not to repeat questions which were addressed to you by Mr. Barshay but confine myself to other questions which he did not ask you. You understand that although all of the defendants—the three defendants are here together being tried before one jury, that each of these men is entitled to a separate trial and deliberation at your hands?

A. Yes, sir.

Q. You understand that in accordance with the Court's instructions that even though there may be a number of witnesses called and only a certain amount of them applying to certain individuals on trial, that you can only use that

evidence against that particular individual to whom it applies?

A. Yes, sir.

Q. If the Court does charge you in that manner and in the further manner that you will deliberate the guilt of each person separately, you will have no hesitancy in doing that?

A. No, sir.

Q. You do not feel that because three men are being tried together, that you must try to find a verdict of Not Guilty as to all or guilty as to all?

A. No, sir.

Q. You are able then to determine in your own mind fairly and squarely the issue as it respects each defendant?

A. Yes, sir.

Q. Have you ever had, either you or your firm, any difficulty with any union?

A. No, sir.

Q. I heard you say something about having some confidential [fol. 431] tracts with unions. You work in harmony with them?

A. Yes, sir.

Q. So there would not be any prejudice or favor to either the prosecution or the defendant in view of the questions that have been asked of you by Mr. Turkus as to the number of so-called officials or members of different organizations or different unions?

A. That is right.

Q. Have you any immediate relatives or close friends on the Police Department?

A. No, sir.

Q. Have you ever heard any speeches of any character either made by Mr. Turkus or any of the officials of Mr. O'Dwyer's office?

A. I have not.

Q. You realize that lawyers for both sides have no personal knowledge of transactions involved here; you understand that?

A. I don't understand you.

The Court: Lawyers are not witnesses.

The Talesman: That is right.

Q. So you will not allow the entity of any lawyer in any wise to sway you?

A. That is right.

Q. Because Judge O'Dwyer is now District Attorney and formerly a judge and is running for Mayor, that is not going to have any effect on you?

A. Absolutely not.

Q. The issue is whether or not you believe witnesses that have presented the story to the District Attorney which was subsequently presented to the Grand Jury and is now before you for consideration?

A. That is right.

[fol. 432] Q. If it develops in the course of the trial that some of the witnesses called by the People actually know some of the defendants, or even all of them, the mere fact that they knew one another, without any other proof, would that in itself lead you to render a verdict against them?

A. No, sir.

Q. I will put it more clearly. The witness takes the stand and the District Attorney inquires as to his supposed knowledge of an alleged crime; is that clear?

A. Yes, sir.

Q. Then if the District Attorney were to ask him does he know any of the defendants, and he says, "Yes, I know the defendant Capone, I have been to his house, I used to meet with him, I attended a ball game or something else," and assuming that subsequently Capone, going on the stand and saying to you, "I know that witness," would the mere fact that he admits knowing the person, standing alone, influence your verdict to the extent that you would say, "He knew the man, therefore he must be guilty"?

A. No, sir.

Q. In judging a person who takes the stand, you are going to judge what motive that man has in testifying?

A. Yes, sir.

Q. If a man were to take the stand and say to you, "I have not only committed eleven murders, for which I have never been tried for one, I lied before the Federal Grand Jury under oath and I lied in this very court under oath where it concerned myself, but now I will tell the truth, so help me God, here," and then tells you a story, you are not going to believe that simply because of his saying, "I am [fol. 433] telling the truth"?

A. That is right.

Q. You are going to look and say, "Well, this fellow admits under examination he committed eleven murders, that he lied before several judges under oath in different cases,

and I will judge his testimony with great care and caution"??

A. Yes, sir.

Q. Assuming that some other witness gets on the stand and admits to a lesser amount of crime, but admits he was involved in murders he has never been tried for, and involved in numerous other things, and he says, "Well, one of the defendants told me that he committed the crime," are you going to judge whether you are going to believe that fellow or not?

A. Yes, sir.

Q. You are going to judge him in the light of how much force you are going to give to that testimony in view of what motive or interest he may have had?

A. Yes.

Q. You understand from what you have heard that no man can be convicted on the statement of an accomplice?

A. That is

Q. And no man can be convicted on the statement of fifty accomplices or one thousand, for that matter, you understand that?

A. Yes, sir.

Q. You also understand from what you have heard discussed by both defense and the prosecution that there must be independent evidence tending to connect the defendants, if you believe the accomplice?

A. Yes, sir.

Q. In other words, you can go on in the jury room and [fol. 434] say, "Well, irrespective of what this accomplice is, I believe his story," but even if you did that you could not convict unless and until you found other dependable, credible evidence that tended to connect the defendants with the crime?

A. Yes, sir.

Q. Would you hesitate because of what has been said about this trial and the number of men who have prejudice and otherwise, to come out into the court-room and say, "Not guilty," if you were unable, after inspecting the evidence, to find sufficient under the law of our land to warrant you in finding a verdict of guilty?

A. I am not afraid of any just verdict.

Q. In other words, you understand, as you should understand, that your verdict, if it rests on your conscience, cannot be questioned by anybody whether they like it or not?

A. That is right.

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Q. Assuming you are in the jury room and you enter into discussion with other jurymen. You are outnumbered in the thought they feel one way, whether it is guilty or innocent, and they feel the other way; you listen to all reasonable argument without rancor or bitterness; you argue your opinion and they argue their opinion; after listening and debating the question you conscientiously believe you are right, would you stick to your opinion?

A. I would stick to it.

Q. You don't feel, as has been evinced by a statement of the District Attorney to some other jurymen, that simply because you stick to your opinion you are looking for a [fol. 435] hung jury, do you?

A. No, sir.

Mr. Turkus: I object to the question.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. Will you, irrespective of what the District Attorney may think, if you are honestly convinced after listening to reasonable argument in the jury room that the opinion you have gained is a proper and just one, retain that opinion after listening to reason and argument, if you have not been changed by other jurymen?

A. That is right, I would.

By Mr. Turkus:

Q. Although Mr. Barshay and Mr. Rosenthal went over with you in great detail about the character of an accomplice, do you recall their questions?

A. Yes, sir.

Q. Do you expect an accomplice, one who admits himself to be part of a crime, to be a college professor or a paragon of virtue?

Mr. Barshay: I object to that.

The Court: Objection sustained.

Q. In the usual course of events, is your state of mind such that murders are not committed openly, on Broadway and 42nd Street?

Mr. Barshay: I object.

The Court: Objection sustained.

[fol. 436] Q. Do you understand that in the prosecution of crime the District Attorney may use an accomplice?

A. Yes, sir.

Q. Do you feel that because a man is a bad man, that he could never tell the truth?

A. He may tell the truth sometimes.

Q. That is going to be your job?

A. Yes, sir.

Q. Do you feel that because a criminal testifies against others who were associated with him in the commission of crime, do you feel he cannot tell the truth, that that would be impossible?

A. No, sir, it could be.

Q. Do you appreciate that sometimes crooks and killers fall out?

Mr. Rosenthal: I object to that.

The Court: Sustained as to form.

Q. Is your state of mind such that men who commit crime together sometimes testify against each other?

The Court: He says an accomplice may tell the truth.

Q. As you sit in the jury box it is going to be your job to find out if what an accomplice tells about his past associates is true?

A. Yes, sir.

Q. And if evidence in the case, other evidence in the case, shows that the accomplice is telling the truth, and other evidence tends to connect the defendants with the commission of the crime of murder in the first degree, would you expect the District Attorney to do more than that to get a conviction?

A. No, sir.

[fol. 437] Mr. Rosenthal: Objected to.

The Court: Sustained as to form.

Q. We will go at it this way: Assuming you heard the testimony of the accomplice and then there is more evidence comes in the case, and you are satisfied from the evidence that the accomplice is not only telling the truth about his past associates in connection with the charge, but you are satisfied beyond a reasonable doubt that the other evidence in the case tends to connect the defendants with the commission of the murder, would you expect the prosecution to submit more than that?

Mr. Barshay: I object.

The Court: Objection sustained as to form. That would be a hard question for a law student to answer.

By the Court:

Q. You understand, no matter how bad a man is, if he takes the stand as an accomplice, that the law requires, in order to consider his testimony, that he be corroborated by sufficient evidence which tends to connect the defendant with the commission of the crime?

A. Yes, sir.

Q. And if he is so corroborated you have a right, if you see fit, to accept his testimony as worthy of belief, and would you in that case try to be fair?

A. I certainly would.

Q. In determining whether his testimony is worthy of belief?

A. Yes, sir.

Q. What was your employment before you went in this business?

[fol. 438] A. I was a manufacturer of woodwork, personally.

Q. What kind of woodwork?

A. Cabinet work.

Q. For how long?

A. Fifteen years.

Q. That was the trade you learned?

A. Yes, sir.

Q. Are you a member of the union?

A. No, sir.

Q. You mean furniture?

A. Furniture, cabinet work, showcases.

Q. One of those concerns on Park and Flushing Avenue?

A. No, sir, not that type; we specialized in certain items of store fronts and all that kind of work.

Q. Those are the only employments you ever had?

A. That is all.

By Mr. Turkus:

Q. Mr. Barshay told you that his client Buchalter is serving a long-term sentence, and asked you if that would prejudice you against the defendant Buchalter, and you said no.

A. That is right.

Q. If he told you there was an appeal pending from the sentence, would that prejudice you?

A. No, sir.

Mr. Barshay: I object to that.

Mr. Turkus: I will withdraw the question.

Q. Supposing counsel for Buchalter went all the way and told you that from part of the sentence there was an appeal pending, or a prospective appeal pending, would that prejudice you against the defendant?

[fol. 439] Mr. Climenko: I object to the form of the question; I specifically object to the question as assuming a state of facts not in evidence.

The Court: Objection sustained.

Mr. Turkus: Am I precluded?

The Court: I don't think the question looks good on the record. I have sustained it on a different ground.

By Mr. Turkus:

Q. Would that sentence enter into your deliberation on the jury as to the guilt or innocence of Buchalter in the Rosen murder?

A. No, sir.

Q. If you are satisfied beyond a reasonable doubt that Buchalter is guilty of murder in the first degree in the Rosen case, that sentence we spoke of would have no bearing in your decision?

A. None at all.

Q. In all, how many trucks does your firm operate in which the teamsters' union has some effect on it?

A. You mean directly, of my own? One of my own, but others that we hire.

Q. How many would that be in gross—all together?

A. Well, we have two others that do work for us.

By the Court:

Q. That is the way you do business, that you have to have your own truck or hire trucks to bring merchandise from the railroad or depots?

A. Yes, sir.

Q. And that they deliver to some customers and you also do that?

[fol. 440] A. Yes, sir.

Q. But some customers, in fact, many, come with their own?

A. Yes, sir, cash and carry.

Q. They pay for their goods and take them away?

A. Yes, sir.

Mr. Turkus: Challenged peremptorily.

The Court: This trial will resume on Wednesday morning at ten o'clock. Members of the panel are cautioned not to discuss the case or read about it or listen to anything that may be said about it during adjournment. Keep your minds open.

(Addressing Mr. Leibowitz) You have been tentatively selected. Follow the same instructions as given to the remainder of the panel.

Return here at ten o'clock Wednesday morning.

The defendants are remanded.

(Whereupon an adjournment was taken until Wednesday, September 24, 1941, at ten o'clock a. m.)

[fol. 441]

Brooklyn, N. Y., Sept. 24, 1941.

Trial Resumed

(Mr. Turkus and Mr. Talley confer with the Judge privately before the bench, without the hearing of the panel.)

Mr. Turkus: I had a discussion with Judge O'Dwyer as regards this talesman (Leibowitz); he is to be of assistance to him in the campaign and it might have some implication on a verdict to be rendered in the case. Under the circumstances, I am going to challenge for cause.

The Court: Do counsel for the defense wish to try the challenge?

Mr. Talley: No, we do not.

The Court: It is unanimous?

Mr. Talley: Yes, all the defendants join in it.

The Court: Then there is nothing to try and the Court has to sustain the challenge. Of course, there has to be ground for it. I am of the opinion that notwithstanding the apparent absolute honesty of this talesman and the fact that he would be an excellent foreman for this jury, he would be in an embarrassing position in the juryroom

[fol. 442] as foreman of the jury in expressing any opinion on this because of his political connection. Challenge sustained.

For the convenience of talesmen who are kept waiting day after day the Court directs the clerk to call twelve talesmen, which will fill the box, and that will, according to the standard of work done last week, supply ample material for the morning's work.

(The clerk then called Norman Kendy, No. 2595; Matthew Labden, No. 2790—no answer to the name—Samuel Cone, No. 2783; Emanuel Camachi, No. 2808, Charles E. Stevens, No. 2602; Joseph Herrick, No. 2788; John M. Pleil, No. 2819; Randolph Tyrrel, No. 2205; Andrew Merrick, No. 2684; Max Gould, No. 2817; Henry Lathrop, No. 2685; Samuel Lieberman, No. 2711; Max Oliver, No. 2724.)

The Court: All members of the panel other than those who have been called in the jury box may go until two o'clock this afternoon.

Mr. Turkus: May I respectfully suggest we continue examining in the same manner as heretofore so that all counsel may hear the questions and answers?

The Court: Yes.

[fol. 443] NORMAN KENDY, of 225 Sterling Place, Brooklyn, New York, was examined as to his qualifications.

By Mr. Turkus:

Q. According to the trestle board you live on Sterling Place. Is that the Park Slope district in Brooklyn?

A. Yes.

Q. Have you lived in that area for a number of years?

A. Three years.

Q. Prior to your residence in the Park Slope area did you live in Brooklyn too?

A. For about twenty-five years.

Q. In any particular district?

A. In Flatbush.

Q. You are listed as a secretary, without any further description. Would you mind telling me the nature of the firm?

A. Importers of crude rubber; I am an officer.

Q. Is there anything about the nature of the charge in this case, namely, the charge of murder in the first degree, which would impair your ability to serve?

A. No.

Q. I take it that you have no conscientious or other scruples against capital punishment?

A. No.

Q. That the matter of punishment will not be considered by you in the jury room nor deliberated upon when considering the guilt or innocence of the defendants?

A. That is right.

Q. Have you had any business contacts in the past that brought you in contact with any firms or individuals in the Brownsville or East New York sections of Brooklyn?

A. No, sir.

Q. I take it that you have none personally?

A. No.

[fol. 444] Q. With respect to the garment district in Manhattan, have you had any contact there, directly or indirectly?

A. No.

Q. Have you had any in your past life?

A. No.

Q. Does that also take in the Brooklyn waterfront?

A. Yes.

Q. I take it you have had no connection, directly or indirectly, at any time, either business or social, with anyone in the garment district in Manhattan, Brooklyn, or on the waterfront or in Brownsville or the East New York section of Brooklyn?

A. Yes.

Q. And does that pertain to the clothing district as well?

A. Yes.

Q. Has your business at any time brought you in contact with people in the clothing district?

A. In a social way, yes; a relative of mine has a business in the garment trade.

Q. Is he personally engaged in that business?

A. Yes, sir.

Q. Is that the manufacture of clothing?

A. No, sir, retail.

Q. So it is not, in the accepted clothing district in Manhattan, where clothes are manufactured and distributed?

A. No, sir.

Q. Has your business at any time brought you in contact with persons or firms in the clothing trucking industry?

A. Never.

Q. Have you heretofore served as a juror in a case?

A. Yes.

Q. Has it been a criminal case?

A. Yes.

Q. Was it in the County Court of Kings County?

A. Yes.

[fol. 445] Has it been recent?

A. Four or five years.

Q. Did that case come to a conclusion? Did the Judge charge the jury on the law?

A. Yes.

Q. So you are familiar with the meaning of reasonable doubt and the doctrine of the presumption of innocence?

A. Yes.

Q. Will you, in accord with the Judge's instructions, give the defendants the benefit of the presumption of innocence and the doctrine of reasonable doubt?

A. Yes.

Q. Are you in sympathy with law enforcement?

A. Yes, sir.

Q. Does your business at any time bring you in contact with any officials, directly or indirectly, of the Amalgamated Clothing Workers of America?

A. Never.

Q. Is the name Jacob Potofsky, an official of the Amalgamated Clothing Workers of America, at all familiar to you?

A. No, sir.

Q. Is the name of Murray Weinstein, manager of the Clothing Cutters Local No. 4, affiliated with the Amalgamated?

A. No.

Q. Or that of Sam Katz?

A. No, sir.

Q. Any familiarity with the name of Bruno Belia, organizer of the Amalgamated?

A. No, sir.

Q. Or with Salvatore Marazzano?

A. No, sir.

Q. Or with Philip Orlofsky, at one time manager of the Clothing Cutters Local No. 4; is that name familiar to you?

A. No, sir.

Q. Did you ever know anyone associated with Local 240 of the Clothing Drivers & Helpers Union?

A. No, sir.

[fol. 446] Q. Is the name of Beckerman or Yudelowitz at all familiar to you?

A. No, sir.

Q. Do you know any individual or any officer of the Flour Truckmens Union?

A. No, sir.

Q. Or of the Teamsters Union?

A. No, sir.

Q. Is the name of Max Silverman or Wolfie Goldis at all familiar to you?

A. No, sir.

Q. Is there any familiarity with the name of William or Willie Alberts, a one-time bondsman?

A. No, sir.

Q. Do you know anyone named Emanuel Buchalter, is that name at all familiar with that of Philip Buchalter, sometimes known as Philip Kowas?

A. No, sir.

Q. Any familiarity with the name of Bellanca or Tosca?

A. No, sir.

Q. Or Terry Burns?

A. No, sir.

Q. Do you have any inherent bias or prejudice against the prosecutor of the county, Judge O'Dwyer, or against the prosecution in this case in which the use of accomplice testimony is employed?

A. None whatever.

Q. In questioning the other prospective talesmen, Mr. Barshay, representing the defendant Buchalter, directed attention of the jury to the fact that he is serving a long term in jail and asked whether or not prospective talesmen had any prejudice against a defendant for that reason, and I ask you if you have any prejudice?

A. No, sir.

[fol. 447] Q. By the same token, do you feel that one who has been convicted of crime and served a sentence should have any sanctuary in a jail when he is charged with the crime of murder in the first degree?

Mr. Clinenko: I object to that as improper in form.

*The Court: I am trying to figure out what is meant by "sanctuary."

Mr. Turkus: I will withdraw it.

Q. Is your state of mind such that you would be inclined to relax or deviate from a proper verdict because the defendant is convicted of a crime and has a jail sentence?

Mr. Barshay: I object to the word "proper."

The Court: The question can be put in more direct form and you will more likely be able to get a proper response. The Court does not like the form of the question, because it assumes something which is not on the record. Now, the talesman may be apprised of the question asked by the defense.

Mr. Turkus: Mr. Barshay has brought out that Buchalter has been convicted of a past crime and is now serving a sentence.

The Court: Is that on the record, that statement?

Mr. Turkus: I have watched carefully, and I notice the stenographer is taking down every question and answer.

The Court: Well, the Court knows that was asked by [fol. 448] Mr. Barshay in open court in the presence of all the members of the panel, but that does not establish it as of the present examination. You must be careful of that.

Mr. Turkus: In questioning every prospective talesman, Mr. Barshay has addressed a question in which he has directed attention of the prospective juror to the fact that Buchalter has been heretofore convicted of crime and is now serving a long sentence in jail.

Q. I ask you would you be inclined—is your state of mind such you would be inclined to relax or deviate from a proper verdict in the case because the defendant is presently in jail for past crimes, serving a long sentence?

The Court: A past crime. That is too involved to follow.

By the Court:

Q. Would the fact that one of the defendants, Buchalter, is now serving a term of sentence under conviction for another crime, a thing that would cause you to avoid con-

victing him here if he is proven guilty beyond a reasonable doubt?

A. No.

By Mr. Turkus:

Q. In other words, your state of mind is such that no matter what his situation may be with regard to past crime on this charge of murder in the first degree, you will decide the case on the evidence presented in the courtroom and on nothing else?

Mr. Barshay: I object to the use of the words "past [fol. 449] crime," I asked specifically about two items, and if Mr. Turkus will confine himself to that I have no objection.

The Court: That refers to the conviction that the defendant Buchalter is now serving a sentence on?

Mr. Turkus: Yes.

The Talesman: The answer is yes.

By Mr. Turkus:

Q. The defendants are represented by nine lawyers. Buchalter is represented by former Assistant District Attorney Barshay, former Assistant United States Attorney Bertram Wegman, and Mr. Jesse Climenko. Do you know any of those three lawyers representing Buchalter?

A. No, sir.

Q. Do you know anyone attached to their staff?

A. No, sir.

Q. The defendant Weiss is represented by three lawyers, former General Sessions Judge Talley, do you know him or anyone connected with his staff?

A. No, sir.

Q. Former Assistant District Attorney Cuff, do you know him or anyone connected with his staff?

A. No, sir.

Q. Former Assistant United States Attorney Kriendler?

A. No, sir.

Q. Capone is represented by three lawyers, Sidney Rosenthal, Leon Fischbein, and Emanuel Rosenberg; do you know any of those three?

A. No, sir.

Q. Or anyone connected with their staffs?

A. No, sir.

Q. With respect to the District Attorney, do you know [fol. 450] Judge O'Dwyer, the District Attorney, personally?

A. No, sir.

Q. Do you know the Assistant District Attorney in charge of this prosecution, Mr. Turkus, or Mr. Klein or Mr. Joseph?

A. No, sir.

Q. Do you know any member of the District Attorney's staff intimately?

A. Yes.

Q. Who is that?

A. Mr. Helfand.

Q. Mr. Helfand is sitting in the jury box facing the prospective talesmen here. Is that the Mr. Helfand you refer to?

A. Yes, sir.

Q. Is your association with him an intimate one?

A. He is a relative.

Q. The next question that might suggest itself is this: Would your association or intimacy with Mr. Helfand in anywise preclude you from rendering a just verdict on the evidence in this case?

A. No, sir—conscientiously, it might.

Q. As the defendants are seated in court, have you any prejudice or bias against any of the three?

A. None.

Q. Have you any conscious favor for the District Attorney in the prosecution of the case because of your intimacy with Mr. Helfand?

A. No, sir.

Q. Is your state of mind such that if you were accepted as a juror you could listen to all of the evidence adduced in the court-room, discuss the case with your fellow jurors without rancor and with common sense and understanding, [fol. 451] listen to the arguments of lawyers for the defendants as they draw their inferences from the testimony, listen to the arguments of the prosecutor and the charge of the learned Court on the law, and then decide the case solely and squarely upon the evidence presented in court?

A. Yes, sir.

Q. And if accepted as a juror in the case, will you endeavor to listen to reasonable argument and discussion by the other jurors in the case?

A. Yes, sir.

Q. If selected, will you endeavor to do justice in the case?

A. Yes, sir.

Q. Assuming that you were accepted as a juror and you did hear all of the evidence in the case and listen to the lawyers for the defense draw their arguments before the jury, listen to the prosecutor and to the Court on the law, discuss the case with the other jurors in the jury room, and then, if your conscience is satisfied beyond a reasonable doubt that upon all the evidence in the case there are three guilty men at the bar of justice, would you hesitate—would you be fearful—would you be reluctant to say so in your verdict?

A. No, sir.

Mr. Turkus: No challenge.

By Mr. Barshay:

Q. You volunteered to Mr. Turkus the fact that when it came to reason this case in the jury box—I am not quoting your exact language—your knowledge of Mr. Helfand, subconsciously, might affect your judgment?

A. Yes, sir.

[fol. 452] Q. Is that what you intended to say?

A. Yes, sir.

Q. That is based upon your intimate knowledge of Mr. Helfand in connection with the prosecutor of this county?

A. Yes.

Q. And, of course, if that did occur, that would not be fair to any of the defendants, would it?

A. No, sir.

Q. You do not intend to be unfair?

A. No, sir.

Q. But subconsciously it might preclude any of the defendants or all of them from receiving at your hands an impartial verdict?

A. Maybe.

Q. So if it came to a question of testimony where the D. A.'s office would contend one thing and the defense another, that knowledge, you volunteered yourself, sub-

consciously might cause you to lean in the direction of the District Attorney's office?

A. It might.

Q. You are very honest and frank about it?

A. Yes, sir.

Mr. Barshay: On behalf of counsel, we challenge this [fol. 453] talesman for cause.

The Court: Try the challenge.

(The talesman, NORMAN KENDY, residing at 225 Sterling Place, Brooklyn, New York, was then sworn.)

By Mr. Barshay:

Q. Now that you are under oath, would you answer the question in the same manner as you did before?

A. Yes, sir.

Q. And the sum and substance is that, because of your intimate knowledge of Mr. Helfand, an assistant prosecutor engaged in work like Mr. Turkus, if it came to a matter of deciding one way or another, subconsciously, your knowledge of Mr. Helfand would cause you to lean in the direction of the D. A., to the prejudice of the defendants?

A. Subconsciously it might, yes, sir.

Q. When you say "it might," that means that you are absolutely certain that you cannot exclude from your mind that intimate knowledge of Mr. Helfand?

A. No.

Mr. Barshay: We urge the challenge.

The Court: Any more questioning by any counsel?

Mr. Turkus: None by the District Attorney.

The Court: This is purely speculative and fantastic and is a psychological question. The effect of fear—there will normally be resistance to it and a tendency to go in the other direction. There is nothing to it. The challenge is overruled.

[fol. 454] Mr. Barshay: Exception for all counsel for the defense.

By Mr. Barshay:

Q. How well do you know Mr. Helfand?

A. He is a member of my family.

Q. A relative?

A. Yes, sir.

Q. May I know how close?

A. A brother-in-law.

Q. You are married to his sister?

A. I am.

Q. And consequently you see him, then?

A. Yes, sir.

Q. Often?

A. Quite often.

Q. You have great hope in his career and for his success?

A. Yes, sir.

Q. You have talked about cases?

A. Yes, sir.

Q. He has discussed some of the work he has done?

A. In a way, yes, sir, an offhand way.

Q. Naturally you pay close attention to the progress he is making with respect to work in the D. A.'s office?

A. Yes.

Q. Not only do you talk to him, but I take it you talk to your own wife about your brother-in-law's progress in the office and his work?

A. Yes, sir.

Q. So it is more than a subconscious feeling; isn't that so?

A. It is according to the way—maybe to draw the line.

Q. It would be hard for you to draw the line?

A. Yes, sir.

Q. It would be like rooting for the team on which your [fol. 455] brother-in-law is playing?

A. That is a good analogy, yes, sir.

Q. And that would be to the prejudice of these defendants?

A. It might.

Q. You are the one who volunteered "it might"?

A. Yes, sir.

Q. I did not bring that out of you at all?

A. No, sir.

Q. You say "it might." Is that based upon the fact that you know the type of work your brother-in-law, Mr. Helfand, is doing?

A. Yes, sir.

Q. And also on the knowledge you gained from talking to Mr. Helfand about the type of work he was doing?

A. He did not discuss it.

Q. You followed that work?

A. Yes, sir.

Q. Especially the work he has done very recently, before the summer session?

A. Yes, sir.

Q. So you can honestly say that it will affect your judgment in this case?

A. It might, yes, sir.

Q. You still say, "It might." Can't you make sure about it?

A. Well, I would weigh the evidence and listen to all of the facts in the case, but when it came to a final conclusion I can say it might weigh because of the fact I am of close relationship.

Q. To the prejudice of the defendants?

A. Yes, sir.

Q. So that if the District Attorney's office contended a proposition and we argued conversely, and it became a question of good faith sometimes with respect to the [fol. 456] District Attorney's office—I don't say it will, but if it does—your judgment would lean in the direction of the District Attorney's office?

A. Yes, sir.

Mr. Barshay: I press my challenge for cause.

Mr. Turkus: I do not wish to seem presumptuous in rising at this time, but there have been some matters brought out that were not brought out on the prior challenge. I can readily understand it may be embarrassing to this prospective salesman because of the relationship with one of the prosecutor's staff—he being a brother-in-law.

The Court: Does that mean that Mr. Helfand is connected with the prosecution of this case?

Mr. Turkus: Not this present case, no, sir.

The Court: Supposing you, Mr. Turkus, brought out in examining salesmen that the brother-in-law was a lawyer who at times defended criminal cases other than this, would that be ground for challenge?

Mr. Turkus: It might not be a technical ground, but I certainly feel he would have no place on the jury.

The Court: You can challenge him peremptorily if you wish; the Court is not allowing this panel to be weeded out any more than is necessary under challenges for cause.

Mr. Barshay: May I respectfully except to your Honor's [fol. 457] comment.

The Court: The law allows a very liberal number of peremptory challenges, and they must be used in a proper case.

Mr. Barshay: May I comment upon your Honor's statement that Mr. Helfand is not directly connected with this prosecution? Every Assistant District Attorney is connected with every prosecution that goes on. Mr. Helfand has prepared and prosecuted cases in the office concerning which your Honor knows but which I shall not name; I do not know whether he had any part in the preparation of this case or on a collateral matter having something to do with this case.

The Court: Have you any such information?

Mr. Barshay: I cannot give it to you because I do not know what goes on in the District Attorney's office, but every member of the staff is part of this transaction as much as Mr. Turkus is.

The Court: Are you through?

Mr. Barshay: Yes.

The Court: The Court's ruling is unchanged.

Mr. Turkus: There is something in what Mr. Barshay says about the preparation of prosecutions, but I do not want to make any more specific reference to it.

The Court: The policy of the Court is this: The Court [fol. 458] is not going to sit from now until Doomsday, spending the taxpayers' money, in trying to save counsel from spending peremptory challenges. The Court will sustain, according to its judgment, a proper challenge for cause. The Court has overruled this challenge, and that stands.

Mr. Barshay: May we respectfully except to your Honor's comment.

The Court: If the Court follows any other policy it will undoubtedly string out the trial of this case as far as the selection of a jury is concerned. It has already consumed more time than is understandable by many people.

Mr. Turkus: May I make my position clear?

The Court: I think the defense made it clear by letting the matter stand as it is, unless you wish to exercise a peremptory challenge.

By Mr. Barshay:

Q. Have you ever gone out on homicide cases with Mr. Helfand?

A. No, sir.

Q. Has he ever been called from your home while he was on homicide duty?

A. Yes, sir.

The Court: May the Court make a suggestion?

Mr. Barshay: Yes.

The Court: I think, in the interest of fairness, if it is [fol. 459] reasonable to assume the relationship has caused discussions and family talks about this case or related cases, then the Court will apply another challenge so we may hear about the family discussions in this matter.

By Mr. Barshay:

Q. Do you remember the last prosecution that Mr. Helfand personally conducted?

A. Yes, sir.

Q. There was much discussion in your family concerning it, wasn't there?

The Court: I withdraw everything I said, because instead of facilitating the selection of a jury, it simply leads to wrangling. The Court will say nothing more, but will be an observer.

Mr. Barshay: I am handicapped through circumstances from asking questions I would like to ask, but I thought your Honor knew these things. I cannot ask them directly.

The Court: Use your own judgment.

Mr. Barshay: That is what I am doing; Mr. Turkus understands it and agrees with me.

By Mr. Barshay:

Q. There was much discussion, wasn't there, in the family circle with your brother-in-law concerning cases which your brother-in-law frequently handled?

A. Yes, sir.

Q. Now, I do not want you to mention the name of any [fol. 460] defendant, you understand that?

A. Yes, sir.

Q. But you did hear the name of Reles?

A. Yes, sir.

Q. You did hear the name of Tannenbaum?

A. Yes, sir.

Q. You did hear the name of Mrs. Walker?

A. I don't recall that.

Q. You did hear the name of Mr. Bernstein?

A. I don't recall.

Q. You did hear a lot of names which you have heard here while you were sitting in the rear of the court-room?

A. Yes, sir.

Q. In other words, there was some similarity?

A. Yes, sir.

Q. And you know, when you were sitting there, your memory was refreshed as to what had been discussed at your home?

A. Yes, sir.

Q. When you heard those questions?

A. Yes, sir.

Q. And that is why you said that subconsciously it might prejudice you against these defendants?

A. Yes, sir.

Q. Well, now, isn't it clear, subconsciously or otherwise, you will be prejudiced against these defendants if these people do testify and their testimony becomes an issue in this case, and their credibility becomes an issue in the case—you will be inclined to favor their side of the case because you have already heard the substance of the stories about like cases?

A. Yes, sir.

Q. And in that way you would be precluded from rendering fair judgment on behalf of these defendants?

A. Yes, sir.

Q. You are honest about that?

A. Yes, sir.

Q. You do not want to be a juror who is not fair or equitable to both sides?

A. Yes, sir.

Mr. Barshay: I renew my challenge for cause.

The Court: Try the challenge.

NORMAN KENDY, sworn:

By Mr. Barshay:

Q. You would repeat the same answers under oath?

A. Yes, sir.

The Court: The trouble, Mr. Barshay, is that the answers were put in the witness's mouth by you.

Mr. Barshay: I take an exception to your Honor's comment, most respectfully.

The Court: Will you please proceed and try the challenge?

Mr. Barshay: I am finished.

The Court: Any questions to be asked by other counsel?

Mr. Talley: No, sir, we join in the challenge.

By Mr. Turkus:

Q. In making the responses you did to Mr. Barshay, did you make those in full candor and fairness?

A. Yes, sir.

Q. Do you honestly feel that because of your relationship with Mr. Helfand and because of your familiarity with certain aspects of the case, you could not be fair to the defendants on trial?

A. Yes.

Q. That is your honest opinion?

A. Yes, sir.

Mr. Turkus: I join with the defense in the challenge.

The Court: The Court is forced into the position of sustaining the challenge, although it has no basis whatever. The talesman's previous answers were all given on the basis of psychological speculation. Then answers were put in his mouth by both sides and willing assent to the suggestion that he is biased. The Court cannot try both sides. You may go. I have sustained one of the challenges only.

Mr. Barshay: Exception.

SAMUEL K. CONE, residing at 405 Woodbine Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Do you live on Woodbine Street?

A. Yes, sir.

Q. Is that in the Ridgewood section of Brooklyn?

A. Yes, sir.

Q. Have you lived there for a number of years?

A. Seven.

Q. Prior to that time did you reside in Brooklyn?

A. Yes.

Q. In the same district or in some other district?

A. Wierfield Street, about ten blocks away.

[fol. 463] Q. Is that also known as the Ridgewood district?

A. I believe so.

Q. There have been many questions asked of prospective talesmen, some of which you may not be familiar with, so that I am obliged to reiterate them specifically to each prospective juror, so I know you will have patience with us as we go on with these matters. Has your business brought you in contact with the Brownsville or East New York area of Brooklyn?

A. No, sir.

Q. Has it in the past?

A. No, sir.

Q. So you have no connection, then, directly or indirectly, with any person or firm in that area?

A. Yes, sir.

Q. Does that also hold true with respect to the garment district in Manhattan?

A. Yes, sir.

Q. You know no one there, individual, or any member of a corporation?

A. No, sir.

Q. You have had no business with them one way or the other, directly or indirectly?

A. No, sir.

Q. With respect to the Brooklyn waterfront, would you give the same response?

A. Yes, sir.

Q. Did you have any contact, directly or indirectly, with any firm or any manufacturers in the clothing district, or with any clothing trucking industry?

A. No, sir.

Q. Are you in sympathy with the enforcement of the penal law of the State of New York?

A. Yes, sir.

Q. Is there anything about the nature of the charge, [fol. 464] namely, murder in the first degree, which would impair your services as a jurymen?

A. No, sir.

Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Would you, if selected, permit the question of punishment to be argued by any member of the jury?

A. No.

Q. I will repeat, would you, if accepted as a juror, permit any other juror to argue the question of punishment?

A. No, sir.

Q. Have you heretofore had the benefit of listening to a Judge's charge on the law in a criminal case?

A. Yes.

Q. If accepted, will you take the law without qualification and implicitly from the trial judge?

A. Yes, sir.

Q. Will you take that law in all of its aspects?

A. Yes, sir.

Q. When you are charged on the law of reasonable doubt, will you give the benefit of that doctrine to the defendants at the bar?

A. Yes, sir.

Q. The Judge will charge you in substance that the burden is upon the prosecution to establish the guilt of the defendants beyond a reasonable doubt. Will you follow that instruction of law and apply it to the evidence in the case?

A. Yes.

Q. The Judge will likewise charge you that the defendants are presumed innocent until their guilt has been established beyond a reasonable doubt. Will you apply that presumption of innocence and give the benefit of it to the defendants?

A. Yes, sir.

[fol. 465] Q. If after you have heard all the evidence in the case you are satisfied that the prosecution has overcome the presumption of innocence and has satisfied your mind beyond a reasonable doubt there are three guilty men at the bar of justice, would you have any hesitation in saying so?

A. No, sir.

Q. Would you have any fear or reluctance about your verdict because of any impairment whatever?

A. No, sir.

Q. There are various names concerning which I want to ascertain if you have any familiarity with. For example,

do you know or do you have any connection with any officials of the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Is the name of Potlofsky at all familiar to you?

A. No, sir.

Q. Or that of Murray Weinstein, manager of the Clothing Cutters Union, Local No. 4?

A. No, sir.

Q. Or Samuel Katz?

A. No, sir.

Q. Or Bruno Belia, organizer for the Amalgamated, does that mean anything to you?

A. No, sir.

Q. Or that of Salvatore Marazzano?

A. No, sir.

Q. Have you had any business or other connections, directly or indirectly, with any officials of the Teamsters Union or Local 240 of the Clothing Drivers Helpers Union?

A. No, sir.

Q. Is the name of Bellanca at all familiar to you?

A. No, sir.

Q. Or Abraham Beckerman?

A. No, sir.

Q. Is there any familiarity in your mind with the name of [fol. 466] Max Silverman or Wolfie Goldis?

A. No, sir.

Q. Is there any familiarity with the name of William or Willie Alberts, at one time a bondsman?

A. No, sir.

Q. Or Emanuel Buchalter, or an individual named Phillie Buchalter, sometimes known as Philip Kowas?

A. No, sir.

Q. Do the names of Bellanca and Tosca suggest anything to your mind?

A. No, sir.

Q. Or that of Terry Burns?

A. No, sir.

Q. Do you know any individual in the automobile business by the name of Weiss in the Park Slope Section of Brooklyn?

A. No, sir.

Q. The defendants are represented by various counsel. I have read their names before: Former Assistant District Attorney Barshay, former United States Attorney Weg-

man, and Mr. Jesse Climenko, representing the defendant Buchalter. Do you know any of those three gentlemen or anyone connected with their office staff?

A. No, sir.

Q. The defendant Weiss is represented by former Judge Talley, former Assistant District Attorney Cuff, and former Assistant United States Attorney Kriendler. Do you know any of those three?

A. No, sir.

Q. Do you know intimately any member of the bar who practices criminal law as a specialty?

A. No, sir.

Q. Do you know Mr. Sidney Rosenthal, Mr. Fischbein, or Mr. Rosenberg, who represent the defendant Capone?

A. No, sir.

[fol. 467] Q. Or anyone connected with their office?

A. No, sir.

Q. The section in which you live, is that part of the Borough of Brooklyn?

A. Yes, sir.

Q. That is not in Queens County?

A. No, sir.

Q. I ask you that because there may be a disqualification.

A. It is right on the border line.

By the Court:

Q. You are between Wilson and what?

A. Knickerbocker or Ridgewood Place. It is a short street, about three blocks long, one block off Wyckoff.

Q. Just where the City Line crosses?

A. Yes, sir, Wyckoff Avenue.

Q. You are a supervisor of what?

A. Telephone repair.

Q. For whom?

A. The Western Electric.

By Mr. Turkus:

Q. Do you know the former prosecutor of this County, Mr. Geoghan, or any member of his staff?

A. No, sir.

Q. Do you know Judge O'Dwyer, or any member of the District Attorney's staff?

A. No, sir.

Q. I take it you do not know Assistant District Attorney Turkus or Mr. Klein?

A. No, sir.

Q. (The Court:) What concern did you say you were employed by?

A. The Western Electric.

By the Court:

Q. Do you belong to a local club up there in the Bushwick [fol. 468] section?

A. No.

Q. Do you know of any local club?

A. No, sir.

Q. Do you know a place at Broadway and Woodbine Street called the Wickwack Club? That is quite some distance away from you.

A. No, sir.

Q. You never went in there?

A. No, sir.

Q. You don't know a man known as "Commissioner" up there?

A. No, sir.

By Mr. Turkus:

Q. In this transaction, do you have any bias against the prosecution for the use of accomplice testimony, if employed?

A. Why, yes, I would say yes; that type is revolting to me; that is my candid opinion. I am truthful when I say that to you. I am opposed to accepting any of the testimony of a man of that kind, of that nature.

Q. Does that prejudice and bias go to the point where under no circumstances you would accept testimony of an accomplice?

A. I would say yes to you.

Mr. Turkus: Challenge for cause.

The Court: Try the challenge.

SAMUEL K. CONE, residing at 405 Woodbine Street, in the Borough of Brooklyn, was then sworn.

By Mr. Turkus:

Q. Prior to being sworn as a proposed talesman, you made response to questions I put to you. I ask you now, did you make those responses in full frankness and full candor?

Q. That is your state of mind?

A. Yes, sir.

Q. You used the word "revolting." That was one of the [fol. 469] words you used?

A. Yes, sir.

Q. You stated, didn't you, and do you reiterate under oath, that under no circumstances would you accept testimony of accomplices?

A. That is right.

Q. And your bias and prejudice against the prosecution which employed the use of such testimony is such as to preclude you from rendering a just verdict in the case?

A. Yes.

Mr. Barshay: No questions from any counsel.

The Court: The inquiry is not sufficient. You did not inform the talesman as to the law on corroboration, as to how he would feel.

By Mr. Turkus:

Q. I take it, Mr. Cone, you have heard the other talesmen questioned in connection with the degree of corroboration required?

A. Yes, sir.

Q. Did you have those instructions of law in mind when you made the responses now?

A. I don't quite follow you.

Q. Did you hear when the other talesmen were in the box where you are now and being questioned, a discussion of the law of corroboration?

A. Corroboration?

Q. Did you know and were you aware of the fact that testimony of an accomplice must be corroborated?

A. Yes, sir.

Q. You knew that when you made your answers to me?

A. Yes, sir.

Q. Are you of the same opinion, that, regardless of cor-
[fol. 470] roboration, you cannot render a verdict free from
prejudice because of your feeling against accomplice
testimony?

A. I repeat, regardless.

Q. You have a feeling against accomplice testimony that
nobody could overcome?

A. Yes, sir.

By the Court:

Q. Do you realize that in the prosecution of cases District
Attorneys use accomplices at times?

A. Yes, sir.

Q. Supposing there was a hold-up in your place, and sup-
posing one of the accomplices spilled the beans, so to speak,
and that was corroborated, would your view be just the
same, that the case should go out of the window?

A. I would say yes.

Q. I want to find out if you are trying to get out of jury
service.

A. I am honest.

Q. Please answer my question directly.

A. Would I accept the testimony?

Q. You heard what I said.

A. I would say no.

Q. I don't know what you mean by "No."

A. I would not accept it.

Mr. Climenko: I object to the question.

The Court: I will reframe the question.

Q. Supposing you were interested in the prosecution of
a case, a criminal case in which you yourself were the com-
plaining witness, would you want the case to be thrown out
[fol. 471] simply because one of the participants testified
as a witness for the prosecution?

Mr. Barshay: I object.

The Court: All right, objection sustained. I am sustain-
ing the objection because I don't think the man is mentally
fitted to sit on a jury.

EMANUEL CAMACHI, residing at 647 56th Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Do you live in the Bay Ridge section?

A. Yes, sir.

Q. Have you lived in the Bay Ridge section for a number of years?

A. Yes, sir, about twenty-odd.

Q. I take it by now you are familiar with the nature of the charge in this case?

A. Yes, sir.

Q. You understand, don't you, that the defendants at the bar are charged with the crime of murder in the first degree? Is there anything about the nature of that charge which would prevent you from being a fair and impartial juror and rendering a conscientious and just verdict?

A. No, sir.

Q. Am I correct when I assume your state of mind is such you have no scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. If selected, you will automatically become foreman by [fol. 472] virtue of your first selection, and if selected as foreman, would you permit anybody to discuss the question of punishment in arriving at a just verdict?

A. No, sir.

Q. If selected, will you listen to reasonable argument and discussion by the other jurors?

A. Yes, sir.

Q. These question I repeat. They are all necessary and I must go into them again with each juror. You understand the reason when I tell you it is mandatory on both sides to ask certain questions of talesmen, it is mandatory with the prosecution and with the defense. Is there anything concerning which I have not made inquiry which would affect your ability to sit as a fair and just juror in the case?

A. No, sir, none whatever.

Q. You are listed on this trestle board as a sales clerk. Is that with some firm or corporation?

A. Yes, sir, R. H. Macy & Company.

Q. Have you been employed there for a number of years?

A. Six years.

Q. Prior to that were you in a different line of business?

A. Yes, sir, I was working in the Chase National Bank.

By the Court:

Q. In what department?

A. Tellers Note Department, such position I had.

Q. You are a Mexican?

A. No, sir, Spanish extraction.

Q. American-born?

A. No, sir, British-born, Spanish extraction.

[fol. 473] Q. May I ask what colony?

A. Antigua, West Indies.

By Mr. Turkus:

Q. Have you heretofore had the benefit of listening to a judge charge the jury on the law, that means to tell the jury what the law is?

A. No, sir.

Q. If accepted as a juror, will you take the law in every respect solely and exclusively from the trial judge?

A. Yes, sir.

Q. (The Court:) You are a naturalized citizen?

A. Yes, sir.

Q. Since your name appeared on this special panel as a prospective talesman, did anybody speak to you about the case?

A. Not as I know of.

Q. I take it your answer means nobody has discussed the merits of the case with you?

A. That is right.

Q. Are you in sympathy with law enforcement?

A. Absolutely.

Q. May I assume, then, at no time in your past business experience you have had any contact with firms in the Brownsville or East New York area?

A. That is right.

Q. Is that true with respect to the garment district in Manhattan?

A. Yes, sir.

Q. Is it likewise true respecting the clothing industry in Manhattan?

A. Yes, sir.

Q. Has business brought you in any contact, directly or indirectly, with the clothing cutters or teamsters of any kind, nature, or description?

A. No, sir.

[fol. 474] By the Court:

Q. You live on the block north of Sunset Park?

A. No, sir, it is quite a ways from Sunset Park. That is between 6th and 7th that I live.

Q. Sunset Park is between 5th and 6th?

A. Yes, sir. I am quite a ways away from it.

Q. You are just west of Shore Road extension?

A. Yes, sir.

Q. I am just trying to get the section.

A. Yes, sir.

By Mr. Turkus:

Q. May I proceed with the thought that you have had no connection, directly or indirectly, business or social or otherwise, with any firms in the district and the industries I enumerated?

A. That is right.

Q. Did you have any business connection at any time with any officials in the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Are you selling specialties for Macy's?

A. Yes, sir.

Q. I take it you have no familiarity with the name of Murray Weinstein or Samuel Katz, officials of the Amalgamated Clothing Union?

A. No, sir.

Q. Does the name Bruno Belia or Salvatore Marazzano suggest anything to your mind?

A. No, sir.

Q. You are completely unfamiliar with those names?

A. Yes, sir.

Q. And is that true with respect to the name of Philip [fol. 475] Orlofsky, at one time manager of the Clothing Cutters Union?

A. Yes, sir.

Q. Do you know any of the officials of Local 240 of the Clothing Drivers Helpers Union?

A. No, sir.

Q. That is a union in the clothing industry, in the delivery of clothes?

A. No, sir.

Q. Or anyone connected with the Teamsters Union?

A. No, sir.

Q. Or with the flour trucking union?

A. No, sir.

Q. Is anything suggested to your mind by the names of Max Silverman and Wolfie Goldis?

A. No, sir.

Q. Or Willie Alberts, one-time a bondsman?

A. No, sir.

Q. Is there anything suggested to your mind by the name of Emanuel Buchalter?

A. No, sir.

Q. Or Phillie Buchalter, sometimes known as Kowas?

A. No, sir.

Q. Is there anything suggested to your mind by the mention of the names Bellanca and Tosca?

A. No, sir.

Q. Or Terry Burns?

A. No, sir.

Q. Do you know the former District Attorney of this county, Mr. Geoghan?

A. No, sir.

Q. Do you know any member of his staff?

A. No, sir.

Q. I take it you do not know Mr. Barshay, former Assistant District Attorney, who is one of the lawyers for Buchalter?

A. That is right.

Q. Do you know Mr. Wegman, former Assistant United States Attorney, or Mr. Climenko, or anyone attached to the law offices of these gentlemen?

[fol. 476] A. No, sir.

Q. Does that hold true with respect to Judge Talley, and former Assistant District Attorney Cuff, and former United States Attorney Murray Kriendler, who represent the defendant Weiss?

A. That is right.

Q. With respect to Capone, who is likewise represented by three lawyers, Mr. Rosenthal, Mr. Fischbein and Mr. Rosenberg; do you know any of those three gentlemen?

A. No, sir.

Q. Do you know any member of the bar who specializes in the business of criminal cases?

A. No, sir.

Q. As you sit in this jury box, is your mind open and free to receive the evidence in the case?

A. Yes, sir.

Q. I take it you sit there without any prejudice against any of the defendants at the bar?

A. That is right.

Q. You are here to deal out even-handed justice to them and render a just and conscientious verdict in consonance with the evidence?

A. Yes, sir.

Q. We have had some discussion with other prospective jurors as to whether or not they have any bias or prejudice against the prosecution for the use of accomplice testimony. Have you heard any of those discussions with the other jurors?

A. Yes, sir, I have heard them.

Q. Have you any prejudice or bias against the District Attorney who breaks a case from the inside?

A. No, sir.

Q. And uses the testimony of accomplices against the other defendants in the case?

[fol. 477] A. No, sir.

Mr. Barshay: I object to the form of the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. Is your state of mind such that you will listen with care and caution, and carefully to the testimony of the accomplice?

A. Yes, sir.

Q. Is your state of mind such that you appreciate at times that even bad men can tell the truth?

A. Absolutely.

Q. And that will be your job?

A. Yes, sir.

Q. And if the prosecutor not only satisfies you that one of the accomplices and one of the co-participants with these defendants in the commission of the crime is telling the truth, and he also furnishes independent evidence from another source which tends to connect the defendants with

the commission of the crime, I take it you have no prejudice against that type of case?

Mr. Barshay: I object.

Mr. Turkus: I will withdraw it in that form.

By the Court:

Q. If the Court should charge you not to accept testimony of any accomplice unless you find it to be sufficiently corroborated by other evidence tending to connect the defendants with the commission of the crime, will you follow that instruction?

A. Yes, sir.

[fol. 478] By Mr. Turkus:

Q. I take it you will follow the instructions of the Court in every respect as to the law and that, conscientiously, you will endeavor to apply the principles of law which the trial justice gives, to the facts in the case?

A. Yes, sir.

Q. And use common sense and experience, and common knowledge, every-day business knowledge, in deciding the single issue in the case, the guilt or the innocence of the men at the bar of justice?

A. Yes, sir.

Q. When accepting principles of law, will you take the principles of law the Judge will give you with respect to any defense any specific defendant may invoke? For example, should a defendant use the defense of an alibi, that is that he was not present at the time the crime was committed, will you take the law from the Judge with respect to that type of defense?

A. Yes, sir.

Q. As you sit in the box, have you any bias or prejudice against expert testimony?

A. No, sir.

Q. That is the testimony of ballistic experts, medical examiners, handwriting examiners, whatever expert testimony there may be?

A. No, sir.

Q. In questioning every prospective talesman, Mr. Barshay brought it to the attention of prospective jurors that his client Buchalter has been convicted of a crime and is serving a long sentence. Would you be inclined, is your

state of mind such that you would relax or deviate from your [fol. 479] duty as a juror in deciding a murder case simply because the defendant is in jail for some other crime?

A. No, sir.

Q. And on this charge, murder first, you will decide that, if accepted, on the evidence in the case, regardless of where Buchalter may be?

A. Yes, sir.

Q. If the Judge charges you that the defendant in a criminal case has no burden of proof, that he may sit still and do nothing that the burden is with the prosecution at all times to establish the guilt of the defendant beyond a reasonable doubt, will you accept the instructions of law and endeavor conscientiously to apply the same to the facts in the case?

A. Yes, sir.

Q. And if accepted as a juror, will you listen to the evidence in the case, the arguments of the defense lawyers in the case, drawing the inferences they draw from the testimony, and to the prosecutor, and then to the charge of the learned Court on the law, and discuss the case without rancor or bitterness, with common sense and understanding with the other jurors, and, having done all of that, and your mind is satisfied that these defendants at the bar have been proven guilty beyond a reasonable doubt, would you hesitate to say so in your verdict?

A. No, sir.

Q. Will you endeavor conscientiously to arrive at a just verdict?

A. Absolutely.

Q. Would you have any fear, reluctance or embarrassment if their guilt is proven to your satisfaction beyond a reasonable doubt, in announcing that verdict in open court?

[fol. 480] A. No, sir.

Mr. Turkus: No challenge for cause.

By Mr. Barshay:

Q. We were not able to hear you with respect to your occupation. Will you repeat it?

A. I am connected with R. H. Macy & Company.

Q. Have you ever been a juror?

A. Never.

Q. Have you ever been called as a special juror?

A. No, sir; this is the first time.

Q. Have you ever been the victim of a crime?

A. No, sir.

Q. Have you read about this case?

A. Yes, sir, to a certain extent, but I have not read with the idea to form an opinion; I have read by way of news.

Q. Whether you read it for that purpose or not, will you tell me, what did you read, and in which paper?

A. I read several. I read the *News*, sometimes the *Mirror*, the *Post*, the *Times*.

Q. In the *Mirror*, more particularly, there was a series of articles referring to some of the complainants having "come across."

A. I think I have read one article.

Q. Was it since you have been called?

A. Yes, sir, since I have been called.

Q. I notice his Honor admonished prospective jurors not to read those articles in the *Daily Mirror*, and at this time may I make the observation that on the very front seat in [fol. 481] this court-room, where jurors were assigned to sit, there is a copy of the *Daily Mirror*. I make that observation for the record.

Mr. Turkus: Let the offensive paper be removed.

The Court: It is directly behind counsel. Maybe one of your colleagues was reading it.

By Mr. Barshay:

Q. At any rate, you are not going to form any opinion by a newspaper?

A. No, sir.

Q. Did you form any opinion by virtue of that you read?

A. No, sir.

Q. Did you determine the accuracy of what you read by reading it?

A. No, sir.

Q. Did you read about the defendants in any other paper?

A. I may have read the headlines but I did not read it to gather an impression; I read all the *News* headlines.

Q. Sometimes a person does not read for a purpose, nevertheless, the same purpose is accomplished. You may

not have formed an opinion, but did you form one whether you wanted to or not?

A. I don't believe I did; I am positive I did not.

Q. Can you tell me now that you do not know anything at all about what you read with respect to its truth or accuracy?

A. I cannot recall what I did read in the first article.

Q. You won't say now. You don't even recall what you read?

A. I will not say I recall everything I read; I certainly may recall some parts.

[fol. 482] Q. Did you believe some parts you did read?

A. No, sir, I would not say so definitely.

Q. May I know how long ago you read it?

A. Well, I read—after I came in here, because I knew nothing about this case before I came in, so I really read that after I came in and knew what case I was on.

Q. While waiting to be called, you heard other prospective jurors being questioned?

A. Yes, sir.

Q. Did that refresh your recollection as to what you read?

A. Yes, sir, the outlines I would say, yes.

Q. Are you impressed with the truth of what you read?

Mr. Turkus: I object to the form of the question. I think counsel has pursued that point sufficiently; the prospective talesman has twice reiterated he can hardly recall what he read and he made no point as to the truth or non-truth of the article.

The Court: Objection overruled.

By the Court:

Q. Have any of the questions that were put to the other jurors brought to your mind what you read?

A. Well, talking over will do that, because I did not know nothing about the case. I may say I heard it. I may say I formed some impression, but no definite impression.

Q. Can you now say whether you have any impression?

A. I would say no.

[fol. 483] Q. Do you say no?

A. I would say no, I have formed no opinion or definite impression against any of the defendants.

Q. You say "definite." Have you formed any opinion one way or the other?

A. No, sir.

Q. Are you sure about it?

A. Yes, sir.

Q. Did you hear any speeches concerning the defendants or the case any place at all?

A. No, sir.

Q. On the radio or in a club?

A. No, sir.

Q. Did you ever hear Mr. Turkus speak about crime, generally?

A. No, sir, except I heard, I heard him talk, but this is the first time I heard him speak.

Q. Did you ever hear any other prosecutor speak about crime generally in any organization?

A. No, sir.

Q. Are you prejudiced by the fact that the defendants are represented by nine counsel?

A. No, sir.

Q. No more than you would have a prejudice against the prosecution because before Mr. Turkus became an Assistant District Attorney he was one of the most eminent criminal lawyers in Brooklyn?

A. I would not know that because I did not know Mr. Turkus at that time.

Mr. Turkus: May I rise humbly and bow to Mr. Barshay.

Q. That has nothing to do with the case at all, isn't that so?

A. Yes, sir.

Q. Do you know anybody at all connected with the waterfront in New York?

A. No, sir.

[fol. 484] Q. Did you know Joseph Rosen?

A. No, sir.

Q. Did you ever hear the name?

A. Not as I recall.

Q. Mr. Turkus read a list of names to you. They mean nothing to you, you said?

A. That is right.

Q. And unless there is testimony in the case connecting them with the case itself, you will disregard the names completely?

A. That is right.

Q. As a matter of fact, you will discard them right now, the same as if I asked you if you knew Jack Dempsey or Gene Tunney?

A. I would not say that, because, to reverse the position there, Jack Dempsey and Gene Tunney I would like to hear, I would be very much interested.

Q. But they have nothing to do with this case; that is what I mean.

A. Yes, sir.

Q. The reading of the names themselves means nothing?

A. No, sir.

Q. For example, do you know Emanuel Buchalter?

A. No, sir.

Q. Is the name of Emanuel Buchalter or Louis Buchalter familiar to you, or do you know them?

A. No, sir.

Q. He mentioned also the name of Philip Buchalter, who uses the name of Philip Kowas—his right name is Philip Kowas, his name is not Buchalter; he is a step-brother of the defendant.

A. That I do not know.

Q. He has no alias whatever; you understand that?

A. Yes, sir.

[fol. 485] Q. And unless there is some connection with the testimony, you will pay no attention to the reading of those names, Potofsky and all the rest?

A. That is right.

Q. Are you a member of any political club?

A. No, sir.

Q. Do you propose partaking in this coming campaign or contributing to it?

A. No, sir.

Q. You have no interest in it at all?

A. No, sir.

Q. Do you know that this is a battle between the prosecution and defense counsel, and you will not find any fault with Mr. Turkas when he fights here, and you will not find any fault with us when we fight here?

A. That is right.

Q. You will take into consideration the number of witnesses that the prosecution has, if they outnumber the defense witnesses in any respect?

A. No, sir.

Q. If they call fifty and you don't believe them, it has nothing to do with the fact that we call none?

A. That is right.

Q. In other words, numbers do not count?

A. Numbers do not count.

Q. As you sat here listening to prospective jurors being chosen, did you form an impression which favored either side, one way or the other?

A. No, sir, I have not, because I do not know what the facts are and I cannot decide one way or the other.

Q. Irrespective of the facts, have you formed an impression [fol. 486] sion which favors the prosecution or the defense?

A. In this particular issue, no.

Q. You know the only issue in this case is the accusation on this piece of paper called an indictment—no other issue—and when the question was asked if you would have a prejudice against my client, Mr. Buchalter, because he is now serving a long sentence, that has not been asked for any purpose except a prejudice against him in your mind, should his credibility become an issue in this case.

A. No, sir.

Q. I am not seeking any sympathy, because I am not trying him on that issue; I am only trying him on the issue before me. We want no sympathy, but we must be sure we get no prejudice from any person in the court-room.

A. Yes, sir.

Q. That is the only reason that question was asked. Do you know any of the names mentioned in this indictment?

A. No, sir. If I heard them maybe I would recall them.

Q. You do not know any of them just as you sat here and heard the jurors asked?

A. I never heard the names.

Q. You don't know them?

A. No, sir.

Q. Did you know the deceased, Joseph Rosen?

A. No, sir.

Q. Did you ever hear about the case when it first happened?

A. No, sir.

Q. Do you know anyone who sat on the Grand Jury that first investigated the matter?

A. No, sir.

Q. His Honor shall charge you that this is a piece of paper [fol. 487] known as an accusation, or indictment, that it has no meaning except it starts a trial; will you follow that?

A. Yes, sir.

Q. It has no probative force whatever; it proves nothing.

A. I understand that.

Q. When the defendant said, "Not guilty," he put something at issue for you to determine.

Mr. Turkus: I object to counsel going into an extended discourse on the law with the prospective juror, because knowledge of law is not an essential requisite for jury service.

The Court: The objection has to be to a specific question. Objection overruled.

Q. If the Court shall tell you what I just said to you, will you follow that?

A. What is that?

Q. That this has no probative force whatever.

A. That is right.

Q. And if the Court shall tell you the plea of not guilty puts the accusation in issue for you to decide, will you follow that law?

A. Yes, sir.

Q. If the Court shall tell you that with every accusation there comes a presumption of innocence in favor of the defendant and that you must apply this to him throughout the stages of the trial, will you follow that law implicitly?

A. Yes, sir.

Q. While you are deliberating, that presumption is still with the defendant, the presumption of innocence—it is a [fol. 488] substantial right that goes to every defendant?

A. Yes, sir.

Q. You will carry out that law?

A. Yes, sir.

Q. Because when the District Attorney asked you if you believed in law enforcement, you said yes?

A. Yes, sir.

Q. But that does not mean only one side of law enforcement?

A. Yes, sir.

Q. Law enforcement also includes the right which is given to the defendant, demanding of him nothing at all,

but demanding from the prosecution proof, the burden of proof, beyond a reasonable doubt?

A. Yes, sir.

Q. I shall not try to tell you what reasonable doubt is, but the Court shall define it, and you will follow it?

A. Yes, sir.

Q. If you hear it elsewhere, or you shall hear it elsewhere between now and the time you are chosen, you will disregard any other definition except his Honor's?

A. Yes, sir.

Q. Would you follow instructions if his Honor should tell you the defendant need not even explain a single accusation against him?

A. Yes, sir.

Q. Or deny any facts urged against him on the witness stand?

A. Yes, sir.

Q. The burden is only with the prosecution and shall never shift, never shift to the defendant in any respect. You will follow that law?

A. Yes, sir.

Q. And as long as there is honestly in your mind a reasonable doubt with respect to the defendants' guilt, or any of the defendants' guilt, you will courageously urge it in his behalf?

A. Yes, sir.

Q. And if there is a reasonable doubt arising out of the evidence, no matter how many people on the jury may disagree with you because they see things differently, you will have the courage to stick to your opinion if it is based upon the evidence; you will be reasonable, you will hear argument?

A. Yes, sir.

Q. And unless you are persuaded by the evidence beyond a reasonable doubt, not from the argument, you will not yield?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Turkus: I don't want any foreman to go into the box misguided; he must listen to common sense. May the jury understand that that question was excluded by the Court?

The Court: Yes.

By Mr. Barshay:

Q. Of course, you understood that; I do not want you to be stubborn; I want you to listen to the evidence and reason with your fellow jurors, argue with them and try to make them see the light, or they may try to see the light. But in the end, the only place you shall look for reasonable doubt is from the witness chair?

A. Yes, sir.

Q. And if, from the witness chair, and from all the [fol. 490] evidence given in the case, you shall feel that the District Attorney has failed to prove our client guilty beyond a reasonable doubt, you will say so?

A. Yes, sir.

Q. You owe no duty to either side?

A. No, sir.

Q. You agree to do a juror's duty, that is, give both sides an eminently fair and square trial?

A. Yes, sir.

Q. Mr. Turkus has asked you about accomplice testimony. Would you follow the law on that point as given by his Honor if he shall charge you that you, as a juror, must accept the testimony of an accomplice with caution, if you accept it at all?

A. Yes, sir.

Q. That will be your job to decide, first, is he telling the truth, won't it?

A. Yes, sir.

Q. And you will weigh it to know whether he is telling the truth?

A. Yes, sir.

Q. You will weigh it very carefully before you shall accept a person's testimony, if he says he is an accomplice in the commission of a crime?

A. Yes, sir, very, very carefully.

Q. Would you use, in weighing the truth or falsity of his testimony, the fact that there was an occasion when the same accomplice, under oath, in another court, when asked about his being an accomplice in this case, said that he was not; would you use that in weighing the truth of his story?

Mr. Turkus: Objected to.

The Court: Objection sustained.

[fol. 491] Mr. Turkus: I ask the jurors be told to exclude that kind of a question that is made to one juror.

The Court: Yes; no specific reference to that.

Q. If, in addition to the admission of this person that he is an accomplice, you also learn from the witness stand when he is on it that he is a thief, that he was a convicted thief and a burglar, and he led a life of crime, would you consider that very closely in accepting his testimony?

A. I would only consider the evidence I heard and if it is corroborated.

Q. If the witness is shown to be a man of bad character, rather than a man of good character, would you take that into consideration in determining whether he is worthy of belief?

A. No, sir, I would not take that; I would have to hear the whole testimony so I could form an opinion whether this man was telling the truth or was not.

By the Court:

Q. You know all kinds of witnesses take the stand and some discredit themselves; you are entitled to know whether a man is a good or a bad man. Now, if a witness is shown to be a man who is dishonest and generally of bad character, would you take that into consideration in determining whether he is worthy of belief?

A. I would take that to a certain extent, but I would have to hear the evidence to decide the truth.

Q. When it came to the end of the case, to decide it, would you take a man's reputation, good or bad, into consideration [fol. 492] in determining whether or not he tells the truth?

A. That I would find out in the course of the trial, whether he is telling the truth or not.

Q. How about his character?

A. That would not enter into the question as far as this case is concerned. As far as the testimony in this case is concerned, the man may be still a bad man and yet able to tell the truth.

By Mr. Barshay:

Q. You said a man's character would have nothing to do with this case? Did I hear you correctly?

A. No, sir, I did not say it has nothing to do, as far as his testimony is concerned.

Q. You say as far as the man's testimony is concerned his character has nothing to do with it?

A. That is right, his testimony.

Q. In other words, it would not matter to you if a man takes the stand and admits he is a participant in a murder and that, in addition to that, he has led all his life a life of crime, burglary, robbery, and attempted murder; all those things you would not consider with respect to whether or not that man is telling the truth?

A. I would say that if that man told the truth on the witness stand and it is corroborated substantially, I would have to take it as the truth. I cannot consider a man's character, criminal or otherwise; I am not considering that question.

By the Court:

[fol. 493] Q. Specifically, supposing the Court should charge you that as to testimony of that witness you must consider character?

A. Then I would have to pay attention to the Court.

Q. And that if the witness is shown to have committed crime, you would consider that?

A. Yes, sir.

By Mr. Barshay:

Q. In other words, had an idea other than his Honor as to the law?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Q. You did tell the Court that if he charged you that you must take into consideration the man's character when he gives testimony, you would follow that?

A. Yes, sir.

Q. But before the Court put that question to you, you did give me the answer about the fact that his character would have no bearing at all on his ability to tell the truth?

Mr. Turkus: I don't think that has been elicited at all.

The Court: There is no use in arguing about what was said some questions back. All of us get confused at times as to our own mental reactions, but when it comes to the trial the testimony reaction is what governs us. This gentleman seems to me to be a little confused but his general

attitude toward obtaining the truth so far has been fairly satisfactory.

[fol. 494] By Mr. Barshay:

Q. I am trying to elicit from you if you could be a fair juror from the beginning.

A. Yes, sir.

Q. If the Court shall tell you you must take into consideration the motive of a man when he testifies against another, will you follow that?

A. Yes, sir.

Q. So that you shall search, as a juror, Why is this fellow saying, "I am part and parcel of this thing"? What is he going to gain by such testimony? Won't you say that to yourself?

A. I suppose I would.

Q. There must be no supposing. Do you promise you would if the Court shall so tell you, that you have a right and duty to look into the motive or hope of reward for any person's testimony in this case no matter who he is; is that clear?

A. Yes.

Q. You agree to do that if you are chosen?

A. Yes, I will go by the Judge's direction.

Q. Assuming, for the sake of argument, I am correctly stating that the Court shall say in substance that, will you follow it?

A. Yes, sir.

Q. There is no doubt about it?

A. No doubt.

Q. You said you believed in the enforcement of criminal law?

A. Yes, sir.

Q. That is for the benefit of any defendant or separate defendant?

A. Yes, sir.

[fol. 495] Q. Of course, if you do not believe an accomplice and you reject his testimony, you will have the courage to acquit?

Mr. Turkus: I object; he cannot assume what the state of proof is.

Mr. Barshay: I said, "if."

The Court: As I understand it, if he does not believe a man he will have the courage to say so.

Mr. Turkus: That is all right; I am sorry.

Q. There has been talk about corroboration. It must be corroboration which tends to connect our client, Mr. Buchalter, with the commission of this crime; you understand that?

A. Yes, sir.

Q. In other words, it does not mean if a man takes the stand and says a person was shot at such a place and time and along came the police and found the body as the person described it; that does not connect our client with the commission of the crime?

A. Yes, sir.

Q. There must be independent evidence furnished by the District Attorney?

A. Yes, sir.

Q. Coming down to independent evidence, that comes from a man who himself on the witness stand, under oath, and probably after direct examination of the District Attorney in the case,—

Mr. Turkus: May we have the jury instructed to disregard that comment?

Mr. Barshay: I withdraw it.

[fol. 496] Q. Will you look into the reputation and character of those people who furnish so-called independent evidence?

A. Yes, sir.

Q. And if one says, "I committed eleven murders," you will take his testimony with caution?

A. That is right.

Q. And in addition to that, he said, "I once committed perjury," you will still use more caution?

A. Yes.

Q. And if he goes along and tells you that all his life he has led a life of crime,—if he tells you those things out of his own mouth,—more caution you shall use in accepting his testimony?

A. Yes.

Q. And if, adding all of the testimony, you find one reason for doubt and the Court says you must give it to the defendant, you will courageously say so?

A. Yes, sir.

Q. Now, is there any reason in your mind which you can advance why you cannot render a verdict here that reflects the truth with respect to the defendant Buchalter?

A. No, sir.

Q. You are free of all prejudice against him?

A. Absolutely.

Q. Is there any member of your family who studied law?

A. He is not in the United States.

Q. Is there any intimate friend of yours with whom you have ever discussed criminal law?

A. No, sir.

Q. Is there any business associate with whom you ever discussed criminal law?

A. No, sir.

Q. So now your mind is ready to accept whatever law there is only from Judge Taylor?

[fol. 497] A. Yes, sir.

Q. Faithfully and honestly?

A. Yes, sir.

Q. These three defendants are being tried together, and each one is entitled to a separate and distinct verdict; do you understand that?

A. Yes, sir.

Q. Do you agree with that?

A. Yes, sir.

Q. In other words, if the evidence does not convince you beyond a reasonable doubt as to one or more you will say so, irrespective of how you feel about the other evidence with respect to the other defendants?

A. Yes, sir.

Q. If testimony is given here concerning one defendant but it has nothing to do with the other, even though this jury was prolonged several weeks, you would try to retain in your mind and memory the testimony as it is binding upon the given defendant, and you will not use it against any other defendant unless and until his Honor says you must; you will not mix them up?

A. No, sir.

Q. Is there anything in your business connection at all which will prevent you from giving your time and attention to a long and protracted trial?

A. Not as I know of.

Q. If the Court in its discretion should cause you to be locked up in a hotel, you would not in any wise let that prejudice you against any defendant?

A. No, sir.

Q. We have nothing to do with that; you understand that?

A. Yes, sir.

[fol. 498] Q. Then you are ready to render an individual judgment, if you are chosen, with respect to our client?

A. Yes, sir.

Q. No doubt about that?

A. No doubt about it.

By Mr. Rosenthal:

Q. You say you are working for Macy's?

A. Yes, sir.

Q. How long have you been with Macy's?

A. About six years.

Q. Prior to that you were with whom?

A. The Chase National Bank.

Q. In what capacity?

A. In different departments, bookkeeping, loans, paymasters.

Q. You had charge of making loans?

A. No, sir.

Q. In answer to Mr. Barshay, before the Court asked you questions on the subject, you made a statement that you were going to judge each witness as he appears on the stand to ascertain whether he is telling the truth?

A. Yes, sir.

Q. Assuming the Court were to tell you that the law is, in determining a witness's motive in telling a story you have a right to take into consideration his background, his interest, relationship to matters, and other things; do you still feel, as you originally said to Mr. Barshay, that irrespective of that background and character, you will take your impression merely of the witness as he testified?

Mr. Tarkus: I object to the form of the question. Instructions of law are given by the Court.

The Court: I thought that was all straightened out.

[fol. 499] Mr. Rosenthal: I have repeated the question on the same subject to see whether it is straightened out.

The Court: To go over it again?

Mr. Rosenthal: I did not intend to go over it again; I am examining for the defendant Capone.

The Court: All right, go ahead.

Q. Were you able to follow the question?

A. Not quite.

Q. I will reframe it. Assuming that the Court were to charge you that in determining what weight or credibility you are to give to any particular witness, you have the right to take into consideration what motive or what interest he may have, his connection with the matter itself, his actions on the stand, and all those things. Do you still believe, as you originally did when you answered Mr. Barshay's question, that you merely are going to judge the witness from the testimony that he gives on the stand?

Mr. Turkus: The jury has a right to take those things into consideration. Defense counsel wants to know in advance what the juror will do. The juror has very properly said in all this extended discussion——

Mr. Rosenthal: I object to any speech.

Mr. Turkus: It is not a speech; it is an objection. The jury has a right to hear the witnesses; to hear all of the testimony in the case, and when he has discretionary rights conferred upon him by the Court in its charge, then he [fol. 500] decides whether he uses them—not in advance, before he hears anything. Mr. Rosenthal wants the juror to say in advance of selection that he will exercise discretionary right, and that I say he has no right to do.

Mr. Rosenthal: He stated to your Honor at large and fully what his objection is, and I ask for the Court's ruling without any further argument.

The Court: The question is complicated.

By the Court:

Q. After being so charged by the Court, would you disregard the charge of the Court and simply decide on the evidence without regard to character?

A. I would take the direction of the Court.

By Mr. Rosenthal:

Q. Did you state in answer to Mr. Barshay, before the Court asked you any question, that, after he stated to you about witnesses who may be called and who had previous

crimes, lives of burglary, false testimony, and things of that character, that you would judge the witness merely from the story he told upon the stand? Did you originally say that?

A. I don't recall saying that; I said I would listen to the testimony before deciding how much I could believe from that witness.

Q. Did you say at that time you would not take into consideration his prior life, because even a man who has led a prior life of that character may sometimes tell the truth? [fol. 501] A. Yes, sir.

Q. Now, after you made that statement to Mr. Barshay, you were questioned further regarding the taking into consideration of the prior activities of any witness.

A. Yes, sir.

Q. Do you still say, irrespective of what you have heard regarding the law, that you will merely judge the witness from the stand, by what you hear him say on the stand?

Mr. Turkus: In advance of hearing the testimony, the juror does not have to say what right he will exercise.

The Court: Objection overruled.

A. Yes, sir.

Q. By that do you mean the impression you gain from seeing the witness?

A. No, sir, from seeing and hearing him.

Q. Well, now, assuming you have heard the witness state on either examination or cross-examination that he has committed eleven murders; and assuming you heard him state he has led a shylock life, committed burglary, stabbed people, run over people, has before a Federal Grand Jury testified under oath to untruths—

Mr. Turkus: I object to this kind of a declaration.

The Court: Do not interrupt.

Q. (Continuing:) --and things of that character, do you still say you cannot take that into consideration in determining what probative force you will give his testimony?

A. I will scrutinize the evidence more closely, but if the [fol. 502] evidence is all corroborated, I naturally would have to take it as the truth.

Q. I am not going on the question of corroboration.

A. There is no other way I can say that. I would not believe, if a man got up and said a horse is black, and nobody said it was black—it is like a pig in the bag.

Q. I want to see if we understand one another. The question of corroboration is separate and distinct, and apart from the question of believability on the part of a witness as to statements which he makes under oath?

A. Yes, sir.

Q. We are talking, not on the question of corroboration nor the question of the crime, but the testimony of the individual, irrespective of whether or not that particular individual admits a state of circumstances of the crime, or attempts to make corroboration; is that clear?

A. Yes, sir.

Q. I am merely speaking of the witness, of the individual, irrespective of what portion of the testimony it seeks to bear out.

A. Yes, sir.

Q. Do you say that, hearing the witness, irrespective of who he is, testify to any portion of a crime, whether it be the crime itself or corroboration, that you would or would not take into consideration in determining the truth of his story, or what weight you will give to it, the fact of his past life of crime and if he has previously perjured himself under oath? Would you or wouldn't you take that into consideration in determining the weight you will give to the testimony of such a witness?

[fol. 503] A. I would to a certain extent, by scrutinizing the evidence more than anything to see just what part I can take and just what part I can throw out.

Q. In determining what part you would take, would you take into consideration his past activities?

Mr. Turkus: That has been already answered. He just said he would.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. You said you read an article in *The Mirror* and in other papers in respect to one or more of the defendants connected with this case.

A. Yes, sir.

Q. Would your reading of that article and would your remembering of it cause a greater amount of evidence to

be produced upon the part of the defendant than would be necessary hadn't you read the article?

A. I don't get that. Will you repeat it, please?

Q. Would the reading of that article and whatever you remembered of it cause a greater amount of evidence to be produced in this case on the part of any defendant than would be necessary had you not read that article?

A. No.

Q. Would it require a lesser amount of evidence on the part of The People to be produced than if you had not read the article?

A. That I would not be able to answer, because I do not know what the evidence is.

[fol. 504] Q. I will make it clear. You admit reading the article?

A. Yes, sir.

Q. You admit, in some particulars, you remember what you read?

A. Yes, sir.

Q. Would the fact that you had read an article concerning one or more of these defendants, and would your remembering of it cause The People in this case to produce a lesser amount of credible evidence than they would have to produce had you not read that article and did not know anything about the defendants?

A. No, sir.

Q. Have you any relatives on the police force?

A. No, sir.

Q. Have you any close friends attached to the Police Department?

A. No, sir.

By Mr. Kriendler:

Q. Have you or has any member of your family ever been the victim of any robbery, burglary, or any other crime?

A. Not as I know of.

Mr. Turkus: The juror is satisfactory to the People of the State.

The Court: Of course, you understand everything is tentative until the final swearing. That will enable selection of a better jury. If you want to tentatively accept the jurymen, let him sit in the box.

Mr. Barshay: I understood the ruling was only pending today. If your Honor extends it it is all right to us.

[fol. 505] The Court: I will extend it so as to give both sides an opportunity for a better check-up. You may reserve peremptory challenges if you wish.

Mr. Barshay: On behalf of all counsel, we peremptorily challenge this talesman.

CHARLES E. STEVENS, residing at 1050 Ocean Avenue, Brooklyn, New York, was examined as to his qualifications as a juror.

By Mr. Turkus:

Q. What section of Brooklyn is that?

A. Flatbush.

Q. Have you lived there for a number of years?

A. I have lived in Flatbush off and on for a number of years; I have lived there now for four years.

Q. Have you lived in any other sections?

A. The Park Slope section about eight months and also the Bensonhurst section for seven years.

Q. The trestle board lists your profession as that of sales representative.

A. Yes, sir.

Q. By whom are you employed?

A. United States Envelope Company.

Q. Does it maintain an office in Manhattan?

A. New York City, Manhattan.

Q. Does your work take you on the outside?

[fol. 506] A. To some extent, not a great deal, however.

Q. I think if my memory is correct, you urged an excuse at one time that your health was bad?

A. No, sir, that is not correct. I was to have a vacation on the 1st of August, and I had a very hard year, and I thought I needed a rest.

Q. You have had your vacation and feel rested, and if you are selected, you will be ready to act as a juror in this case?

A. Yes, sir.

Q. There is nothing about your condition of health that would impair your jury service?

A. No, sir.

By the Court:

Q. What is your business?

A. Envelope manufacturing, United States Envelope Company. We have a sales office at 270 Broadway, and our factories are in the Mid-West.

By Mr. Turkus:

Q. Has your business in the past brought you into contact with firms or individuals in the Brownsville or East New York district?

A. No, sir.

Q. You have had no connection, directly or indirectly, with anybody in that area?

A. No, sir.

Q. Does your work bring you into the garment district?

A. Yes, sir.

Q. Have you had any dealings, directly or indirectly, with any firms or individuals in that district?

A. No, sir.

Q. Does that hold true with the clothing trucking industry, and the clothing industry?

A. Yes, sir.

Q. So that we may proceed now, may we not, with the thought in mind that you have no connection, socially or by way of business, directly or indirectly, with any firm or corporation in the areas I have enumerated, or having any business with those particular lines of industry?

A. That is correct.

Q. With respect to the Amalgamated Clothing Workers of America, are you acquainted with any officials of that union?

A. No, sir.

Q. Are the names of Murray Weinstein and Katz at all familiar to you?

A. No, sir.

Q. With respect to Bruno Belia, an organizer of the Amalgamated, is that also true?

A. I never heard of him.

Q. Or with Salvatore Marazzano?

A. I don't know him.

Q. Did you have any connection or have you had any business with any clothing drivers' or teamsters' union?

A. No, sir.

Q. Do you know any official of Local 240 of the Clothing Drivers Helpers Union of America?

A. No, sir.

Q. Is the name Philip Orlofsky, at one time manager of the Clothing Cutters Union, associated with the Amalgamated, does that mean anything to you at all?

A. No, sir.

Q. Is there any familiarity in your mind with the names of Max Silverman or Wolfie Goldis?

A. No, sir.

Q. Has the name of William Alberts any significance?

A. No, sir.

[fol. 508] Q. A one-time bondsman?

A. No, sir.

Q. Has the name Emanuel Buchalter any familiarity to you?

A. No, sir.

Q. Or that of Philip Buchalter, sometimes known as Philip Kowas?

A. No, sir.

Q. Or Bellanca or Tosca, or a man named Terry Burns?

A. No, sir.

Q. Is there anybody in the automobile business in the Park Slope section of Brooklyn that you know named Weiss?

A. No, sir.

Q. Since your name appeared on this special panel, since you received notice that you would be a prospective talesman, did anybody speak to you about this case?

A. Well, people in the office discussed my being called on the jury, and my family discussed it.

Q. But those discussions were limited to your prospective jury service, in making arrangements at your place of business and at home?

A. Yes, sir.

Q. You never discussed with anybody concerning the merits of the case?

A. Several people tried to, but I said I knew nothing about it and I was unable to discuss it.

Q. Were those people strangers?

A. No, sir, personal friends, people in the office and like that.

Q. Were those discussions had after you had attended in court?

A. Well, yes.

Q. In those discussions was the name of any defendant used?

[fol. 509] A. One.

Q. Was it in the nature of a discussion as to what your state of mind was?

A. They attempted to ascertain that, yes, sir.

Q. Was this somebody whom you knew for some time?

A. Yes, sir, people in the office whom I knew since I have been there.

Q. Was this in the nature of curiosity?

A. Yes, sir, curiosity on their part, I should say.

Q. It was nothing to interfere with or affect your deliberation of the case?

A. Oh, no.

Q. Whatever was asked of you was a matter of curiosity by somebody in the office?

A. Yes, sir.

Q. You are sure of that?

A. Positive.

Q. Are you in sympathy with the enforcement of the law of the State of New York?

Mr. Climenko: I object to the form of the question.

The Court: Objection overruled.

A. I am in sympathy.

Q. Do you know the former prosecutor of the county, Mr. Geoghan, or any member of his staff?

A. No, sir.

Q. I take it you do not know Mr. Barshay?

A. No, sir.

Q. Do you know Mr. Wegman, former Assistant United States Attorney?

A. No, sir.

Q. Or Mr. Climenko?

A. No, sir.

Q. Or counsel for the defense,—any counsel for the defendant Buchalter?

A. No, sir.

[fol. 510] Q. Do you know anybody connected with their respective law offices in any capacity?

A. Not to my knowledge.

Q. Do you know Judge Talley, or former Assistant District Attorney Cuff, or former Assistant District Attorney Kriendler, who represent the defendant Weiss?

A. No, sir.

Q. Do you know anyone connected with their office or their staff?

A. Not to my knowledge.

Q. Is that true also as to the lawyers who represent Mr. Capone, Rosenthal, Fischbein, and Rosenberg?

A. Yes, sir.

Q. Do you know Judge O'Dwyer or any member of his staff?

A. No, sir.

Q. Specifically, do you know Mr. Turkus, Mr. Joseph, or Mr. Klein?

A. No, sir.

Q. In questioning the other prospective talesmen, Mr. Barshay asked the question as to whether or not there would be any prejudice against his specific defendant, Buchalter, who is now serving a term of years in jail. Have you any prejudice against Buchalter for that reason?

A. No, sir.

Q. You would decide this case on the evidence in the case?

A. Yes, sir.

Q. Whether Buchalter is or is not serving a sentence in jail has nothing to do with your deliberations in the case on trial, as to his guilt or innocence of murder?

A. No, sir.

Q. Have you heretofore sat on a jury in a criminal case where the Judge charged the jury on the law?

[fol. 511] A. No, sir, I have not.

Q. If accepted as a juror will you take the law in the case in its every aspect from the presiding judge?

A. I would.

Q. And will you conscientiously and with common sense endeavor to apply the principles of law as given by the Court to the specific issue in this case, as to the guilt or innocence of these defendants?

A. Yes, sir.

Q. For example, should the Judge charge you that the burden of proof is always upon the prosecution to establish guilt beyond a reasonable doubt, will you follow that instruction of law?

A. I will.

Q. If the Judge should charge you that the defendants have no burden at all, that they can sit still or do what they please—they have no burden in the case—will you follow the specific instructions of the County Judge which he gives you in that respect?

A. Yes, sir.

Q. And with respect to the presumption of innocence, should the Judge charge you that every defendant is presumed to be innocent until his guilt is established beyond a reasonable doubt, will you follow that instruction on the law of presumption of innocence that the Judge shall give you, and apply that conscientiously and with common sense in this case?

A. Yes, sir.

Q. So I take it you are free from any prejudice or bias against any or all of the defendants on trial?

A. That is—

[fol. 512] Q. As to the point of any possible bias or prejudice against the prosecution, may I direct your attention to this: Have you any bias or prejudice against the prosecution wherein it employs the use of accomplice testimony?

A. No, sir.

Q. Do you find any fault with the prosecutor who breaks a case from the inside and gets one of the killers to testify against the other?

Mr. Barshay: I object to that part of the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I have no objection.

Q. As to the character and background of any specific accomplice in this murder case, will you take the principle of law that the Judge gives you as to rules and tests you can apply to such individual?

Mr. Climenko: I object to the term "this murder."

The Court: I thought it was a murder case.

Mr. Climenko: I know the indictment charges that crime, but I object to the form of the question.

The Court: Objection overruled.

Mr. Climenko: Exception.

A. I would.

Q. Is your state of mind such that you feel that even a bad man can tell the truth?

A. Yes, sir.

Q. Of course, if anybody came in with a case which rested solely upon the testimony of an accomplice, no matter what you felt about the accomplice telling the truth, your duty [fol. 513] would be clear, you would have to acquit—we will let that go at that. Now, if you heard the testimony of an accomplice in the case and then there is independent proof which not only satisfies you the accomplice is telling the truth, but the evidence tends to connect the defendant with the commission of the crime, and you are satisfied as to that beyond a reasonable doubt, would you hesitate to find a guilty verdict?

A. No, sir.

Q. Should a defendant come along with a defense—for example, a defense of an alibi, will you take the law specifically from the Judge in applying it to any specific defense that may be raised by the defendant in the case?

A. Yes, sir.

Q. If accepted, should you automatically become foreman of this jury, will you listen to common-sense, logical discussion of the other jurors in the case when you deliberate on the issue of guilt or innocence?

A. Yes, sir.

Q. As you sit in the box now I take it your mind is free and open and ready to receive evidence and render a just and conscientious verdict on the evidence?

A. Yes, sir.

Q. If selected as a juror, will you endeavor to do justice in the case?

A. I will.

Q. Will you endeavor, by your verdict, to render justice in the case?

A. Yes, sir.

Q. If you have heard all the evidence in the case as an acceptable juror, and you heard the lawyers for the defense tell you how they view the evidence, and then you listened [fol. 514] to the inferences from the prosecutor, and then you had the benefit of the Judge's instructions on the law, and then in the jury room you sit with the other jurors and with common sense and understanding talk over the issue in the case of guilt or innocence of the defendants, and you should come to a conclusion and you are satisfied from the

evidence beyond a reasonable doubt that at the bar of justice there are three guilty men, Buchalter, Weiss, and Capone, guilty of murder in the first degree, would you hesitate to say so in your verdict?

A. It would be my duty to say so.

Q. Would you have any fear or reluctance in saying so?

A. No, sir.

The Court: (addressing panel) Please do not discuss the case, gentlemen. Be in your places at two o'clock.

The defendants are remanded.

(Whereupon a recess was taken until two o'clock p. m.)

[fol. 515] Afternoon Session—Trial Resumed

The Court: Suppose we move up these gentlemen and fill the other three chairs and let the rest of the jurors go?

(Three additional talesmen took their seats in the jury box. All other talesmen were excused until 10 a. m., September 25, 1941.)

(The examination of Mr. CHARLES E. STEVENS was continued.)

By Mr. Climenko.

Q. Mr. Stevens, did I understand that you are employed by the United States Envelope Company?

A. That is correct.

Q. How many employees has it?

A. The entire company has about three thousand employees.

Q. Where is it?

A. The New York Office, 270 Broadway, corner of Chambers Street.

Q. That is the office you are connected with?

A. Yes.

Q. About how many employees of the company work there?

A. Twenty-one.

Q. You are employed in a sales capacity?

A. That is correct.

Q. And are you on speaking terms with the other twenty who are at that office?

A. Yes.

Q. You see them every day?

A. Yes.

Q. You have been employed by that company for some [fol. 516] time, I take it?

A. About nine and a half years.

Q. And most of your co-employees are persons who, like you, have a comparatively long tenure in the employ of that company?

A. That is correct.

Q. You have known them for many years?

A. That is correct.

Q. And you are intimate with them?

A. Yes.

Q. I think you said that somebody had attempted to speak to you about the case.

A. That is correct.

Q. Before that happened had you read about the case?

A. Only in connection with this particular trial, that is, I saw in the paper that this trial would take place on August 4th. It was after I received my jury summons.

Q. When did you receive your summons to appear here as a juror?

A. Sometime in July.

Q. That is all right. I don't care about the specific day, but approximately sometime about the middle of July?

A. Probably, yes.

Q. And was it at about that time that you had a discussion with one of your co-employees about this case?

A. No, it was about two weeks ago.

Q. Only two weeks ago did you have any discussion about the case?

A. As to the case, yes.

Q. And with how many persons did that conversation proceed?

A. Actually it was not a conversation, but two people asked my opinion on the case.

[fol. 517] Q. Two people asked your opinion?

A. Yes.

Q. Did you answer the question?

A. I told them I had formed no opinion.

Q. I beg pardon?

A. I told them I had formed no opinion.

Q. Was that the whole extent of the conversation?

A. Yes.

Q. Nothing more was said?

A. I told them I would rather not discuss the case under the circumstances, so they said nothing further.

Q. Nothing beyond that was said?

A. Because each day I came in the office during the examination of jurors here they would ask me whether or not I had been excused, but other than that there was no discussion.

Q. Have we now got from you the whole substance of your conversation with your co-employees about this case?

A. That is correct.

Q. Did I understand you to say when you were answering the questions put by Mr. Turkus that the name of a particular defendant had been mentioned in one of these conversations?

A. That is correct.

Q. So that a moment ago we did not have the whole substance of the conversation?

A. Well, in referring to the case, they always referred to it as a particular case, naming one of the defendants.

Q. One of the defendants was named?

A. That is right.

Q. Was there any conversation about that specific defendant as a person?

A. No.

Q. No conversation whatsoever?

A. Not to the best of my memory.

Q. Prior to that conversation you had read about the case?

A. Not prior to the case actually being called. In other words, I have seen one of the defendants' names in the paper for various things but not in connection with this case.

Q. When would you say was the first time that you had noticed, as you can presently recall it—and I know that you cannot remember entirely accurate,—but your best recollection as you sit here now: When is the first time that you read about any defendant in this case?

A. Well, probably August 4th.

Q. 1941?

A. Yes, sir.

Q. Before that day you have no recollection of having read about any defendant in this case?

A. Now you mention it, I recall seeing something in the *Times* saying that a plea to have the trial elsewhere had been denied.

Q. That what?

A. A plea on behalf of the defendants to have the trial held in a different section of the city or state had been denied.

Q. Aside from that, you remember having read at any time prior to August 4th about any of these defendants?

A. Not to the best of my recollection, no.

Q. So that before August 4, 1941, you were unaware of the existence of any of these defendants?

A. No, that is not so.

[fol. 519] Q. Had you read before August 4, 1941, about any of these defendants?

A. I have seen the name of one of them mentioned in the papers.

Q. In which paper?

A. Well, it must have been either the *Herald-Tribune* or the *Sun*, because I read those papers.

Q. And when would you place the earliest time when you read about that particular defendant?

A. I have no way of knowing. The name has just become familiar to me, but I have no way of knowing just when.

Q. As I understand your answers, the name of a particular defendant had become familiar to you in consequence of newspaper reading; is that right?

A. Yes.

Q. In consequence of that newspaper reading, had you formed an opinion with respect to that defendant?

A. In relation to this case, no.

Q. I beg pardon?

A. In relation to this case, no.

Q. You know nothing about this case as a matter of fact?

A. That is correct.

Q. Is that right?

A. That is correct.

Q. You are not connected with any member of the Police Department?

A. Well, I know one patrolman in the Flatbush section. He is a member of a club I belong to.

Q. What club is that?

A. The Terrace Tennis Club.

Q. It is not a political club?

A. No.

Q. It is what its name implies?

A. Exactly.

[fol. 520] Q. You did not discuss the case with that gentleman?

A. I am not on intimate terms with him. I play tennis with him.

Q. We can put it this way: that your acquaintanceship with him is restricted to his playing tennis, and that is a policeman?

A. That is right.

Q. You are not acquainted with anybody associated with Mr. Turkus in the office of the District Attorney?

A. Not to the best of my knowledge.

Q. Is that correct?

A. That is correct.

Q. Are you a member of any political organization?

A. No, I am not.

Q. And you are not politically active?

A. No.

Q. The fact that there is a political contest impending would not in any way affect your judgment about a matter in the administration of justice, would it?

A. No, it would not.

Q. You are able to distinguish between those two matters?

A. Yes.

Q. You would not let one coalesce or confuse your mind about the other—right?

A. No.

Q. With respect to the particular defendant whom you have read about, did you develop an opinion, an unfavorable opinion, of him in consequence of your reading?

A. No, I didn't, because the articles I read were simply statements of fact, that is, things which have actually taken place, and they gave no indication as to their opinion as to [fol. 521] the guilt or innocence of these men. It was purely a record of the facts.

Q. Well, the point is that whatever you may have read did not develop an opinion in your mind unfavorable to that defendant?

A. No.

Q. Is that correct?

A. That is correct.

Q. And as you sit here now do you say—I withdraw that.

Q. Did you say you had never sat on a jury before?

A. I never have.

Q. And you have never been a party to any litigation?

A. No.

Q. And you have never been even collaterally concerned with the prosecution of a criminal case?

A. No.

Q. Never been the victim of a so-called crime; is that right?

A. That is correct.

Q. Assuming that you should be charged as a matter of law, I mean suppose that the Judge should instruct you that the defendants, all of them, are presumed to be innocent, would you be able to follow that instruction?

A. I would.

Q. Assuming as part of that instruction you were told that an indictment which charges that a murder was committed is nothing more than a charge and that in and of itself it has no value so far as evidence is concerned, would you have any difficulty in following that instruction?

A. No, I would not.

Q. None whatsoever?

A. No, sir.

Q. Well, then as you sit here now do you assume that these defendants are innocent?

A. Yes.

[fol. 522] Q. That is your mental assumption with respect to all of them; is that correct?

A. That is right.

Q. It is your assumption with respect to any defendant that you may have read about; is that correct?

A. That is correct.

Q. And you have no feeling about any of these people which would in any way interfere with your ability to assume their innocence?

A. I have not.

Q. Particularly if you were told that it is your duty as a juror to assume their innocence; is that right?

A. That is right.

Q. You referred to certain newspaper stories that you had read. You have a vivid recollection of those stories as we refer to them now?

A. Yes.

Q. Did you accept those stories as having stated the facts?

A. Yes, they were indisputable facts.

Q. I beg your pardon?

A. They were indisputable facts. The facts could not be disputed.

Q. Indisputable facts?

A. Yes.

Q. Were those facts, assuming that you accepted them as such, unfavorable to the defendant?

A. Not in any way, no.

Q. Not in any way?

A. No.

By the Court:

Q. Is William B. Stevens, Jr., your father?

A. No.

Q. William B. lives on East 21st Street, which is a block from you.

A. No relative of mine.

[fol. 523] Q. Do you go to All Souls Church?

A. No, I don't.

Q. He is one of the trustees.

A. Dutch Reformed Church on Church and Flatbush.

By Mr. Climenko:

Q. Mr. Stevens, did any of your office associates attempt to prejudice you against any defendant in this case?

A. I would not say they attempted to prejudice. The remarks they started to make, if I had interpreted them as such, might have prejudiced me; in other words, if I had accepted what they were saying as facts and absorbed them as such, I could have possibly been prejudiced.

Q. One or more of your business associates made statements purporting to be statements of fact with respect to a defendant in this case?

A. No, interpreted them as being their opinion.

Q. One or more of your business associates expressed his or their opinion with respect to at least one defendant in this case?

A. That is correct.

Q. You listened to the statement of that opinion?

A. That is correct.

Q. You could not help but hear it?

A. That is correct.

Q. In the course of civilized conduct, in relation to someone who had started to talk to you; is that right?

A. Yes.

Q. The statements that you heard under those circumstances were prejudicial against that particular defendant; is that correct?

A. That is correct, yes.

[fol. 524] Q. Were you in any wise influenced by the making of that statement or those statements by your associate or associates?

A. No, I resented their making them.

Q. You resented their making them?

A. Yes.

Q. Did you express your resentment?

A. Well, I said that I felt that the men were entitled to trial and that until they were judged guilty I did not see how anybody could make loose, irresponsible statements, such as I considered theirs to be.

Q. You said then that you thought that that was an unjust thing for anybody to say?

A. In substance, yes.

Q. That was your feeling about it?

A. Yes.

Q. You particularly resented those statements being made to you in view of the fact that your associates already knew that you had been summoned here as a prospective or possible juror in the trial of this case?

A. That is right.

Q. Is that right?

A. Yes.

Q. And, having that in mind, you were quick to express your resentment of these prejudicial remarks; is that correct?

A. Yes.

Q. But, as I understand your state of mind, you were not only quick to express the resentment, but the resentment which you expressed was an honest reflection of your state of mind; is that correct?

A. That is correct, yes.

Q. And I am right in assuming, as I interrogate you now on behalf of one of these defendants, that even if you had [fol. 525] not then held a notice from this court asking you to appear as a prospective juror, you would nevertheless have resented the making of any such statement, is that correct?

A. Probably would have, yes.

Q. Because you felt that that was an un-American statement to make, did you not?

A. Yes.

Q. And you are in favor of the policies of the law that a fair trial must be accorded all men; is that correct?

A. That is correct.

Q. And you felt that that kind of talk was unjust and unfair and illegal; is that correct?

A. That is correct.

Q. Because it might possibly prejudice a defendant and deprive him of a fair hearing upon a trial; is that correct?

A. Yes, sir.

Q. And that is your state of mind now, as you sit here?

A. It is.

Q. And were you sworn as a juror you could approach the issues in this case without any prejudice against any defendant; is that correct?

A. I feel sure I could.

Q. Yes? Now assuming that you were chosen as a juror in this case, and even though you have not had the benefit of any prior experience sitting as a juror in the trial of a case, you would know, would you not, that perhaps your main duty as a juror would be to pass on the credibility of witnesses as they testify; isn't that so?

A. That is so.

[fol. 526] Q. And by passing on the credibility of witnesses, you mean discriminating between those whose statements can be accepted as truthful and rejecting those which cannot be accepted as truthful; is that correct?

A. That is correct.

Q. You frequently have to pass on the credibility of statements which are made to you in the ordinary course of your life, do you not?

A. Yes.

Q. You have certain rules that guide you in doing that, whether or not those rules are formally set down in any book, haven't you?

A. Yes.

Q. A man has a reputation as a liar, to that extent you are on guard against him, aren't you?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Something has been asked you about accomplice testimony by Mr. Turkus. You understand what an accomplice is?

A. Yes, I do.

Q. You understand that sometimes people have a motive to tell the truth and sometimes they have a motive not to tell the truth; is that correct?

A. That is correct.

Q. People who approach you in the ordinary transactions of your daily life have to be judged as to whether or not they have a motive to tell the truth or a motive to tell a falsehood; is that correct?

A. That is right.

Q. In passing on the credibility of an alleged accomplice, would you have in mind in determining his honesty or lack [fol. 527] of honesty as to what his motives might be in testifying?

A. Examine those motives very carefully.

Q. You would?

A. Yes.

Q. Were it to develop that a so-called accomplice had a motive to falsify and a motive to testify in order to help himself, would you have that in mind in passing on his credibility?

A. I would, yes.

Q. In other words, just as self-interest is an element which you have in mind in relation to the truth or falsity of the statements made to you in your every-day life, so self-interest, perhaps of the keenest kind, may become an element, a standard that you have to use in judging the

truth of falsity of a witness who takes the stand. You understand that, do you not?

A. Yes, that is right.

Q. Reverting for a minute to those conversations that you had with your associates at the United States Envelope Company, were the participants in that conversation or those conversations your superiors?

A. No, they were my equals. In other words, in the same capacity as I am.

Q. They were sales representatives?

A. That is right, other types of the company.

Q. You would not feel beholden to anybody for the propriety of your verdict in a case of this kind, would you?

A. I did not hear the question.

Q. I say you would not be beholden to anybody for the [fol. 528] propriety of your verdict in a case of this kind, would you?

A. No, I would not.

Q. In other words, in a matter of this kind you swear to do your honest duty, assuming that you are chosen as a juror; is that correct?

A. That is right.

Q. Mr. Turkus asked you assuming that the proof might convince you beyond a reasonable doubt, etc., etc., would you be hesitant in bringing in a verdict of guilty. Do you remember that question?

A. Yes.

Q. Now I ask you, assume that after all of the testimony is elicited and assume that the Court should instruct you as a juror that you could not convict except upon a demonstration of guilt beyond a reasonable doubt, and assume that the Court would instruct you that reasonable doubt was a doubt inspired by a reason, and that you had a reasonable doubt after measuring all the proof, would you be at all hesitant in delivering a verdict of Not Guilty?

A. No, I would not.

Q. Would you feel reluctant to do your sworn duty by reason of the fact that somebody having nothing to do with the administration of justice, somebody who by accident was an associate of yours in a commercial firm, in your place of employment, somebody had perhaps intimated that he would not have agreed with that—would that influence you at all?

A. It would have no bearing on the matter.

Q. Not for a moment, would it?

A. No.

[fol. 529] Q. That was an opinion expressed by someone who had never heard the evidence?

A. That is right.

Q. And the mere fact that that opinion was expressed was, in your mind, an un-American and unfair thing?

Mr. Turkus: It has been gone over ten times now.

Mr. Climenko: Only twice.

Mr. Turkus: Same way ten times. Withdrawn. Go ahead.

Q. Assuming that you did bring in a verdict of Not Guilty, you would not be reluctant to meet with your associates again, would you?

A. No reason why I should be.

Q. You would not feel reluctant to bring in such a verdict because it might be in the back of your mind that, having done it, brought in a verdict of Not Guilty, it involved a certain mental courage on your part to meet with these co-employees who possibly harbor a different view?

A. It would have no bearing on the matter at all.

Q. Not for one minute? You would listen to this case on the proof as it were presented within this court-room; isn't that so?

A. Correct.

Q. And you would listen to this case in relation to any particular defendant solely with respect to his guilt or innocence in this particular case; is that right?

A. That is my understanding, yes, sir.

Q. And your understanding is that you are to discriminate and distinguish as between one defendant and another [fol. 530] other; is that correct?

A. That I may or may not, did you say?

Q. I withdraw the question. Assuming the Court should charge you that each defendant is entitled to a separate verdict; would you have any difficulty in following such instruction?

A. No.

Q. In other words, what that comes to is that although the case is tried simultaneously as against each defendant, it is a separate case, and as to each defendant you are under an obligation to pass a separate judgment; you understand that?

A. That is my understanding, yes.

Q. And with respect to any defendant in this case, you could pass fairly on the issue of this case, and the only issue is one of guilt or innocence, altogether independently of anything that you had ever read or seen about that defendant; is that correct?

A. That is correct.

Q. Whatever you may have read, seen, or heard, you know as you sit here now, as you will sit here were you chosen as a juror, that that defendant is presumed to be innocent of any charge incorporated in the indictment? You know that?

A. That is my understanding, yes.

Q. And that would be your mental attitude in listening to the proof in this case—correct?

A. Yes, sir.

Q. If, after hearing all of the proof, you had a reasonable doubt as to any defendant, you would not hesitate for a moment to say, "Not Guilty" as to him; is that correct? [fol. 531] A. That is correct.

By Mr. Talley:

Q. Mr. Stevens, do you understand that under our system of law when a man is charged, by an indictment or otherwise, with commission of a crime, that the burden is not placed upon him to prove his innocence of that charge?

A. That is my understanding, yes, sir.

Q. And you understand that the burden is always on the people who bring the charge?

A. Yes.

Q. To prove the guilt of that defendant and, going a step further, to prove it beyond a reasonable doubt. You understand that?

A. Yes, I do.

Q. And if you had a reasonable doubt, a doubt for which you could give a reason, a doubt such as you might have about the ordinary affairs of life, would you resolve that doubt in favor of the defendant?

A. That would be required of me.

Q. You would do so?

A. Yes.

Q. You stated that you understood there was no burden upon a defendant to prove his innocence. You understand

that it is not required that a defendant in a criminal case take the stand to prove anything in his own behalf?

A. I understand that, yes.

Q. And if the Court should charge you, as the Court will without question, that if a defendant does not take the stand after The People have put in their case, that you are not to [fol. 532] indulge in any unfavorable presumption against him because he does not take the stand, will you follow that direction of the Court?

A. I will.

Q. Precisely?

A. I will.

Q. And you would not indulge in any presumption unfavorable to any of these defendants if in the judgment of counsel there is no requirement for them to take the stand?

A. I would not.

Q. Is that correct?

A. That is correct.

Mr. Talley: I have no further questions.

By Mr. Rosenthal:

Q. You understand, Mr. Stevens, that each one of these defendants is represented by separate counsel?

A. Yes.

Q. And you further understand, as Mr. Climenko said to you, that the proof as to any one particular defendant is all that you personally can use in the jury room against that defendant? Is that clear?

A. That is clear.

Q. So that in determining this case, if you are accepted as a jurymen, you will only apply such evidence under the Court's instructions as you feel is applicable to the particular defendant in determining his guilt or innocence; is that correct, sir?

A. That is right, yes.

Q. I take it you are not acquainted with anybody in the District Attorney's office, are you?

A. Not to the best of my knowledge, no.

Q. And you are not actively interested in the outcome of [fol. 533] the present political campaign?

A. No, I am not.

Q. Your verdict would be based solely upon the evidence without fear or favor; am I correct in that statement?

A. That is right.

Q. And you have never served on a jury before, have you?

A. No, I never have.

Q. And you have never been called, I take it, for Grand Jury?

A. No, I have not.

Q. You understand that you are entitled to your own individual opinion in the jury-room?

A. Yes.

Q. You further understand, sir, that even though you form an opinion, it is your duty to reason and listen to the other jurymen's reasoning as to any difference they may have in opinion from yours? You understand that?

A. That is my understanding.

Q. Do you further understand, sir, that if, after reasoning with your fellow jurymen, you still retain the honest, conscientious opinion which you first formed, and their reasoning has not in any wise disuaded you from your view, that it is your bounden duty to retain that opinion?

A. Yes.

Q. By that I do not mean that you argue or bicker or otherwise, but that you have an opinion formed on your conscience which has not been taken away by any reasonable logic or arguments of your fellow jurymen; is that clear to you?

A. That is clear.

[fol. 534] Q. Merely because of the fact that you happen to serving for the first time and others may be of a different opinion to you who may have served on other juries, would that influence you in your conscientious opinion?

A. No, it would not.

Q. Your opinion, if formed upon your conscience after listening to reasonable argument, which has not been changed, will remain the same; is that correct?

A. That is right.

Q. Numbers, hours, business, and other things would not dissuade you; is that correct?

A. No.

Q. Another thing, if I recall rightly, you originally made some excuse on account of illness. Am I correct?

A. It was not illness, as I explained to Mr. Turkus. My vacation started August 1st, and I felt I needed the rest because I do work very hard during the year, and unless I were excused I lose that rest, which I felt I needed.

Q. My impression was that you had made some mention when you were examined by the Court of having gained eight or ten pounds?

A. Gained eight pounds; that is right.

Q. So I assume you had been ill before that?

A. I was not ill, but I was just——

Q. You feel that your health at present is such that you could, in case this trial lasts a period of time, and you are kept together in the hotel with your fellow jurymen, that it would not in any wise impair your health to a degree where you would not be able to serve properly as a juror; you feel that?

[fol. 535] A. I don't believe it would, because, as a matter of fact, I have the best record of attendance in the office.

Q. I am not finding any fault. I just want to find out from you, having in mind the fact that this may be and undoubtedly will be a prolonged trial, you feel, sir, that your health is such that it will permit it?

A. I do, yes.

Q. Mr. Turkus questioned you on alibies as a defense and asked you would you take the law from the Court. Do you recall that question?

A. No, I cannot say I do.

Q. In questioning you, however, he did mention to you that if one of the defendants or more maybe interposed a defense of alibi and asked whether you would take your instructions in respect to alibi from the Court and you answered yes, rightfully so. Do you understand, sir, that at no time does a defendant have to prove his innocence?

A. That is my understanding.

Q. And do you understand, sir, that even though a defendant may offer the defense of alibi, the burden of proving his guilt of the crime charged never shifts from the District Attorney? Do you understand that?

A. Yes.

Q. If the Court were to charge you that even though a defendant interposes a defense of alibi and even though you were not convinced of that particular defense, that nevertheless the question of his guilt or innocence must be found from the believable evidence that has been produced by The People; would you take that charge?

A. Yes.

[fol. 536] Q. You understand that I want this clear in your mind: that at no time in a criminal case does the

burden of proving any defendant guilty of a crime shift from The People?

A. That is my understanding.

Q. And even though the defendants may stand mute and offer no defense whatsoever, or not take the stand, even that fact could not be utilized by you in determining the guilt or innocence in the jury room; do you understand that?

A. Yes.

Q. You find no quarrel with that particular law, which absolves the defendants from producing any witness or taking the stand on their own behalf in order for you to judge their guilt or innocence from the evidence, do you?

A. I have no objections to that.

Q. On the question of accomplices, you understand from what you have heard here, and if you don't, please say so, that even though you may believe an accomplice, unless there is other evidence in the case, believable evidence, tending to connect any one of these defendants with the crime, you must acquit the defendant? Do you understand that?

A. Yes, sir.

Q. So that you might go into a jury room and say that "In my mind I am convinced that the accomplice has told the truth," that in and of itself would be insufficient unless in going through the balance of the evidence you were able to find credible evidence leading you or tending to connect the defendants with the crime. Is that clear?

A. Yes.

[fol. 537] Q. On the question of accepting the evidence of The People's witnesses or any witness, do you feel, sir, that in determining what weight you will give to any particular witness, that you will judge that person not only by his actions upon the stand, but by what interest or motive he may have in the outcome of the proceeding? Do you feel that way, sir?

A. Yes.

Q. And in judging what weight you will give to any witness's testimony, whether he be termed an accomplice or not an accomplice, will you take into consideration his past method of life, his past record of swearing falsely, if such be the case, his past record of criminal activities, if such be the case, and all those things, in order to better enable you

to determine whether a person of that character is apt to be telling you, the jurymen, the truth?

A. Consider all those things, yes.

Q. Merely because the District Attorney may say to you that a man is not an accomplice, in and of itself will not make you say that he is not an accomplice, will it?

A. No.

Q. If the Court were to charge you in certain instances that the question of an accomplice is a matter of law, which means that the Judge tells you directly that he is an accomplice and you must accept him as such, you would do that, wouldn't you?

A. Yes.

Q. On the other hand, if the Court were to tell you that in some instances it is not the Judge's duty as the law to tell you whether a man is an accomplice, but it is your duty to find out from the facts whether you consider him an [fol. 538] accomplice—do I make myself clear so far?

A. Yes.

Q. — will you search the evidence to determine in your own mind whether that person is an accomplice or not?

A. I will.

Q. And if you find, after searching the evidence, to your own satisfaction that he is an accomplice, would you hesitate in voicing that opinion to your fellow jurymen?

A. No.

Q. And if you still retained that opinion, would you hesitate, if the Court were to charge you that under those circumstances additional evidence is required tending to connect the defendant, to ascertain whether such additional evidence exists before you entertain a verdict of guilty? Do I make myself clear?

A. The question was a little involved.

Q. As I told you before, the Judge may say to you, "This man is an accomplice as a matter of law," and you must accept that as such.

A. Yes.

Q. The Judge may say to you that as to particular other witnesses it is up to you, the jury, to determine whether this man is an accomplice as a question of fact. Is that clear?

A. Yes.

Q. You evaluate the evidence and you weigh it in your own mind, you determine that he is an accomplice as a fact. Is that clear so far?

A. Yes.

Q. If the Court were to charge you whether a man is an accomplice as a matter of law or whether you find him an accomplice as a matter of fact, once it is determined that [fol. 539] he is an accomplice, there must be other evidence in the case tending to connect the defendant with the crime before you can convict; would you look then through the evidence to ascertain whether such does exist?

A. I would, yes.

Q. And if you were unable to find to your own satisfaction that such existed, would you hesitate to resolve that doubt in favor of the defendants and acquit?

A. I would not.

Q. Just let me ask this question: You were very fair when Mr. Climenko questioned you. You said that somebody in your office started a conversation with you which you resented. Has that conversation in any wise left such an impression upon your mind that it would take any lesser amount of evidence on the part of The People than would be necessary had you never had that conversation?

A. No, it has not.

Q. Has that conversation left an impression which would require any greater amount of evidence from the defendant than if you had not had that conversation?

A. No, it has not.

Q. Of course it is clear by now that this case has had some publicity. That we all know. Isn't that true?

A. That is true.

Q. Merely because of that fact, would you be hesitant if you were conscientiously of the opinion that The People had failed in their burden of proof, namely, to prove any of the defendants guilty beyond a reasonable doubt, would you be hesitant in voicing that doubt by a verdict of acquittal?

A. I would not.

[fol. 540] Q. It may develop in the trial that certain of the individuals called as witnesses by The People may be known to my particular defendant, possibly to other defendants. Would the mere fact of association or knowledge of one another, without any further proof believed by you, be sufficient to prejudice your mind? In other words, let me

put it squarely like this: Suppose it developed that the defendant knew one of the prosecution's witnesses. The prosecution's witness says to you that that defendant had some connection with the crime. The defendant admits that he knows the individual but denies the connection with the crime. Would the mere fact of knowledge of the individual influence you to such extent—

A. Not unless it were substantiated by additional evidence.

Q. In other words, not unless you believe that, in addition to knowing the individual, the defendant actually participated in the crime; isn't that true?

A. It would have to be brought out as that, yes.

Q. But the mere knowledge of association of the individual without the belief on your part of the particular witness as to the circumstances of the crime, in and of itself would not so prejudice you against the defendant that you would be led to find a verdict of guilty?

A. No.

Q. You have been asked regarding one of the defendants serving time. Would the fact that a defendant is serving time in any wise prejudice you against one or the other [fol. 541] defendants who was on trial with him?

A. No.

Q. You understand, sir, that the bringing of three men together and trying them is a matter of convenience? You understand that, sir?

A. I do not know what the reason is.

Q. Each one is entitled to a separate verdict at your hands; is that correct?

A. Yes.

Q. And whatever may apply to one, if it is not connected to the other, must be dismissed from your mind in determining the guilt of the other; is that clear to you?

A. That is my understanding, yes.

Q. So that a verdict against any particular defendant must fall or rise upon the proof as you believe it to be against that particular man, and you must, as nearly as is physically possible, dismiss from your mind anything with respect to the other defendant if it is not in any wise associated with the particular defendant whose guilt you are then considering; is that clear?

A. Yes.

Q. On the question of admission, the District Attorney may attempt to prove that one of these men or all of them, for that matter, we not being apprised of the fact up to this time, assumedly admitted to one of his witnesses that he had some connection with the crime. Have I made myself clear so far?

A. Yes.

Q. If such happens to be the case, have I your promise, sir, that in searching this alleged admission you will find [fol. 542] from whose mouth it comes, first of all, what motive the individual may have in making the statement or the alleged statement that somebody made a statement to him, and his background, both in so far as his criminal propensities are concerned and veracity is concerned, and weigh it in that light and that light alone? Have I your promise?

A. That is right.

Q. You understand further that on the question of the so-called corroboration which you have heard so much about that if you determine that certain witnesses are accomplices as a matter of fact, in addition to those whom the Court may charge are accomplices as a matter of law— Is that clear to you?

A. Yes.

Q. — that then the law, if it is charged by his Honor, is that one accomplice cannot corroborate another. Is that clear?

A. If that is the law, I would take it as such.

Q. If the Court were to charge you even though there be a hundred people who are accomplices, that would have no greater weight than the one accomplice himself and could not be used as corroboration, you would have no difficulty in following that, would you?

A. No.

Q. You would not say to yourself, "Well the Judge charged us that one could not corroborate the other, but here we had nine accomplices and they all say the same thing, so there must be some substance to it"? You would not say that, would you?

[fol. 543] A. I would have to have further corroboration.

Q. In other words, you would follow the Court's instruction that the additional evidence must come from an untainted source?

A. Correct.

Q. Outside of accomplices; is that true?

A. That is right.

Q. Do you further understand that the defendant is being tried on what we call an indictment? In this particular instance it is only a few lines long. You understand that?

A. Yes.

Q. That is all my defendant is here to meet. Do you understand that, sir?

A. Just the one charge.

Q. Yes, sir. And that that is all we are here to meet. Do you understand that?

A. Yes, sir.

Q. So that when the evidence is brought in in this case you will confine yourself in determining whether or not the District Attorney has, by credible proof, shown you that this defendant has committed this crime. Is that true?

A. That is true.

Q. Not what you may have heard on the outside as to any defendant, whether involuntary or not, not what you have read in newspapers, not what you have heard discussed in the courtroom, but the proof as it comes from witnesses' mouths in this court-room. Is that true?

A. That is clear.

Q. And that is what you say you will do if you are accepted as a juror?

A. I will.

Q. Am I correct, sir?

A. That is correct.

[fol. 544] Q. Just this one other thing: You know, sir, that as a jurymen of the State of New York that you are not only committed to justice in so far as The People are concerned, but as far as the defendant is concerned?

A. Yes.

Q. You understand the defendants are an integral part of the State just the same as The People?

A. That is my understanding, yes.

Q. So that you will deal fairly as between The People of the State, which comprise the prosecution, and the defense, is that right?

A. Try to get an impartial judgment on the case.

By Mr. Turkus:

Q. Mr. Stevens, Mr. Rosenthal in talking to you said his client has to meet an indictment that is a few lines

long, and that that is the limit of the inquiry, and you properly made response that you were going to listen to the charge in the case. Is that correct?

A. That is correct.

Q. Whether the charge is contained in an indictment of a single sentence or a million words, you know that the charge here is the crime of murder in the first degree; is that correct?

A. Yes.

Q. And it is your duty to find out whether the defendant that he represents and the other defendants have committed the crime of murder in the first degree, whether it be alleged in an indictment of a single sentence or a thousand words; is that correct?

A. That is correct.

[fol. 545] Q. Now, Mr. Rosenthal spoke to you about the false alibi. He said, assuming that you found——

Mr. Rosenthal: I object to the question. I never said anything about a false alibi at all. I said that even though he may not believe, he, the jurymen, the alibi. There is no such statement on the record, and I object to it, your Honor.

Mr. Turkus: I have been interrupted in the middle of a question.

Mr. Rosenthal: You are interrupted when you make a false statement. I made no mention of any false alibi.

The Court: Finish the question.

Mr. Turkus: May the juror be told to disregard the allegation of Mr. Rosenthal about any false statement?

The Court: What is the question?

(Pending question read by the reporter.)

Q. Assuming that you found that the alibi was untrue, in words or substance, would you nevertheless require The People of the State of New York to establish guilt of that defendant beyond a reasonable doubt, and I believe your answer was "Yes."

Mr. Rosenthal: I object to the question and the preamble upon the ground it is not founded on fact.

The Court: Overruled.

Mr. Rosenthal: I respectfully except.

Q. Did you lose track of the question?

[fol. 546] A. I understood you to say would I require that you establish your case beyond a reasonable doubt.

Q. That is right, nevertheless.

The Court: If you did not believe the alibi.

A. No, I would not require you to establish more than beyond a reasonable doubt.

Q. What I am trying to find out is this: Assuming that you found a defendant interposed a false alibi, and the Judge instructed you in words or substance that the interposition of a false and concocted alibi might be found by the jury to show a consciousness of guilt on the part of the defendant who would do so, would you find that repugnant with your frame of mind as you now sit in the chair?

Mr. Talley: I object to the form of the question.

The Court: Overruled.

Mr. Talley: I object to the injection of the matter of false alibi in this case.

The Court: You will follow the instruction?

The Talesman: I will follow the instruction.

The Court: Overruled.

Mr. Talley: Exception.

Q. And would you find such an instruction repugnant to your frame of mind now?

Mr. Rosenthal: That is objected to.

The Court: Overruled.

[fol. 547] Mr. Rosenthal: Exception.

A. No, I would not.

Q. Do you find any quarrel with that law?

A. No.

Q. Are you sure of that? Is there any doubt in your mind?

A. No, there is no doubt in my mind. I am not familiar with the law.

Q. Would the common sense of it, if a man were to put in a false and concocted alibi, do you find that the common sense of it is repugnant to the law, namely, that you can consider that consciousness of guilt?

Mr. Rosenthal: I object to that question.

The Court: Sustained.

Q. At any rate, Mr. Stevens, as you are now seated in this box, you find no quarrel with the law as I have outlined it to you in connection with alibi?

A. I do not.

Q. There has been quite a discussion about the fact that—was it two co-employees spoke to you about the case?

A. That is correct.

Q. Had your relations with them been cordial before the discussion?

A. Entirely so.

Q. And were your relations cordial after the discussion?

A. Yes.

Q. Was your—I think I may not have correctly heard the word, but what was the feeling that you said you had when there was this discussion—resentment?

[fol. 548] A. I said I resented their trying to.

Q. What I want to inquire is this: Was it a resentment that somebody who was not called for jury duty spoke to you in advance about their opinion?

A. My feeling is this: that frankly I would rather not serve on this jury, but if I am called upon to serve, it seems to me such a terrific responsibility that I can't understand why people who—

Q. Who know nothing about it?

A. Can attempt to influence a man who might have to make such a grave decision.

Q. In other words, your frame of mind now as you sit in the jury box is that this is an important case, important to The People of the State of New York as well as the defendants on trial?

A. Yes.

Q. And you did not want any outside source to in anywise affect you one way or the other in advance of hearing the evidence in the case?

A. That is right.

Q. Just because somebody happened to indicate an opinion which was unfavorable to the defendant or more of them—I do not know whether you said one or more, but whatever the case may be—would you have such pride of opinion that you would be inclined to demand more of the State of New York than had there been no discussion?

A. No.

Q. In other words, I think you said to one of the lawyers that you feel beholden to no one in the outcome of the case; is that correct?

A. That is correct.

[fol. 549] Q. You do, however, of course, feel beholden to your oath as a juror?

A. Yes.

Q. And that will be the only thing that will guide you and affect you in the determination of the issue of guilt or innocence; is that correct?

A. That is correct.

Q. In other words, may we accept that you will obey your office as a juror and endeavor conscientiously to arrive at a just result in the case?

A. Yes.

Q. One of the lawyers spoke to you about people in everyday life. Do you remember that discussion that you had with him?

A. Yes, I do.

Q. Is your frame of mind such that you expect a prosecutor in a murder case to bring in people of the type that you would meet in your every-day walk of life?

Mr. Climenko: I object to the form of the question.

The Court: Overruled.

Mr. Climenko: Exception.

Q. (Pending question read.)

A. I have never given that consideration of the types that might be brought in.

Q. Suppose you just take a moment out to consider that, in view of what you said. Have you any expectation as to the type of individual that will come into the court that you will expect a certain standard of character of a witness to be produced by the prosecution?

A. I cannot say I have.

Q. I think you said in response to my question that you [fol. 550] have no bias or prejudice against a prosecution which breaks a case from the inside and uses the testimony of an accomplice against the others involved in the case.

Mr. Talley: I object to the question, if your Honor pleases.

The Court: Isn't this all repetition?

Mr. Talley: Yes.

The Court: A great deal of time has been spent with one man, an hour and a half. Has not enough been learned to decide?

Mr. Turkus: If I had not thought it was proper to ask I would not have done so. Am I foreclosed from proceeding any further?

The Court: No, I am just making this as a suggestion, because unless we reasonably limit the questions at all times we run into more difficulty—You will get so tired you won't be able to continue questioning talesmen. You should make some speed here. So far all you have to show for five days work is three challenges have been exercised out of sixty. That is not promising for the future, unless we make more speed. Remember the acceptance is tentative for both sides.

Q. I believe it was Mr. Rosenthal that asked you whether or not you would examine the source of any admissions attributed to a defendant. Am I correct in that?

A. I believe he did.

[fol. 551] Q. Is your state of mind such that you feel that no criminal discusses a criminal activity with another?

Mr. Barshay: I object to the question.

The Court: Sustained.

Q. Is your state of mind——

The Court: If you question any man long enough you will disqualify him.

Mr. Turkus: I am not trying to do that.

The Court: That is the inevitable result. Just like walking in the streets. If you walk long enough and far enough you will be hit by an automobile. It is only a question of time.

Mr. Turkus: Judge, I am not trying to have any such thing happen.

The Court: I do not want you to wear yourself out.

Mr. Turkus: I won't be worn out. I want to make sure we get a fair and impartial jury, and I want to ascertain certain of the mental operations of a prospective juror.

The Court: You have nine lawyers on the other side dividing up this work, and you are doing it all yourself. Mr. Klein is not here to help you. I am not trying to nag you.

Mr. Turkus: I know you would not, because with nine against me, I should not have the Judge against me too.

The Court: The Judge is trying to be impartial, but at [fol. 552] the same time I would like progress made.

Q. Is your state of mind such that you would reject an admission attributed to a defendant because it came from another criminal?

A. No.

Q. In other words, will you look at the issue in this case where the District Attorney comes in with a murder that happened in 1936, breaks it from the inside and produces the testimony of an accomplice, one of the participants in the murder with the defendants on trial, and brings in other evidence tending to connect the defendant with the commission of the crime, and after you hear the whole thing, if you are satisfied that the accomplice is not only telling the truth but that the defendants are implicated in the commission of the crime, and if you are satisfied of that beyond a reasonable doubt, would you hesitate to say so in your verdict?

[fol. 553] Mr. Talley: I object to the question, to the form of the question, to the preamble of the question.

The Court: Sustained.

Mr. Turkus: Let me break it down, Mr. Stevens. Assuming that you are satisfied from all the evidence in the case that the accomplice is not only telling the truth but that the defendants and each of them have been connected with the commission of the crime, and you are satisfied of that beyond a reasonable doubt, would you hesitate to say so in your verdict?

Mr. Talley: Object to that as having been asked in various forms at least a half a dozen times.

The Court: Sustained.

Mr. Turkus: One of the lawyers asked you whether or not you would segregate the evidence in the case so that it would apply to the specific defendant against whom it was given. That you were asked in words or substance, and I think you properly said you would endeavor to segregate the evidence. Now if you find in all the evidence in the case that there was a conspiracy in which all the defendants joined and the Judge were to charge you that the act of

one would be the act of all, would you follow the instruction of law?

Mr. Rosenthal: I object to the question on the ground it is not a proper statement of law.

[fol. 554] The Court: Act of one in furtherance of the conspiracy.

Mr. Rosenthal: Further on the ground there is no charge of conspiracy in the indictment.

The Court: There does not have to be. Overruled.

Mr. Rosenthal: Exception.

The Court: Will you follow the instruction of the Court on that point?

Mr. Stevens: I will.

Mr. Turkus: If you find from all the evidence in the case that these defendants at the bar of justice, Buchalter, Weiss, and Capone, joined into a conspiracy with others to effect the death of Joseph Rosen and that, in pursuance of the conspiracy, Rosen was shot to death and killed, and you are satisfied of that beyond reasonable doubt, would you hesitate to say so in your verdict?

Mr. Talley: Object to that as having been asked in various forms.

The Court: Sustained.

Mr. Turkus: No challenge for cause.

Mr. Barshay: No challenge for cause on behalf of the defendants.

Mr. Turkus: Satisfactory to the People of the State.

Mr. Barshay: Satisfactory to the defendants.

The Court (to Mr. Stevens): Take Seat 1.

[fol. 555] JOSEPH O. HERRICK, of 667 Tenth Street, Brooklyn, New York, was called as a prospective juror.

Mr. Barshay: May we ask your Honor something on behalf of all counsel, to clarify the ruling your Honor has made with respect to the acceptance of the juror?

The Court: Yes.

Mr. Barshay: We desire, sir, if your Honor so sees fit, that the juror judged acceptable to both sides be sworn as a juror, and that process should be followed throughout the trial.

The Court: The Court is not obliged to do that until twelve men are accepted on both sides. The Court may in its discretion swear one at a time.

Mr. Barshay: Then do we understand, sir, that you leave the door open for either side to again exercise a challenge?

The Court: There is a more practical reason than that. That is the question of ultimate housing.

Mr. Barshay: Can we know, your Honor, privately, if necessary, the reason?

The Court: You go ahead with this, and I will talk about that later.

JOSEPH O. HERRICK, was then examined as to his qualifications.

By Mr. Turkus:

[fol. 556] Q. Mr. Herrick, you live in the Park Slope district of Brooklyn?

A. That is right.

Q. And your occupation on the trestle board is listed as that of an insurance broker.

A. That is correct.

Q. You and I have met before?

A. Many times.

Q. And when was the last time that we met?

A. Oh, possibly a year or two ago, but I have known you for over twenty years.

Q. We will get right down to business very quickly. The defendants at the bar here are charged with the crime of murder in the first degree. As has been eloquently said by everybody in the case, the defendants are entitled to have a fair and impartial trial. Do you feel that because of your acquaintance and friendship with me, that you would be precluded from giving these defendants that kind of a trial, a fair and impartial trial on the evidence?

A. No.

Q. Do you know any other member of the District Attorney's staff?

A. I know Mr. Rooney, I know Harry Walsh.

Q. Do you know any of the defense counsel in the case?

A. No.

Q. I have read off the names, Mr. Barshay, a former Assistant District Attorney, Mr. Wegman, and Mr. Climenko.

A. I do not know any of them.

Q. Representing the defendant Buchalter.

Mr. Talley: If your Honor pleases, I submit this to you: Do you not think it would help in the economy of time—and Lord knows we spent enough time on this phase of the case [fol. 557] now—to take up the question of the juror's frank statement at the beginning of his examination that he has known Mr. Turkus for some twenty years and met him many times as some such acquaintance that he thought might reasonably be assumed to make it embarrassing for him possibly to sit as a juror on this case, and not go into a long examination on the part of the District Attorney and upon defense counsel, in view of that statement? It would seem to me that the District Attorney can hardly afford to take this gentleman.

Mr. Turkus: I bent over backwards when one juror was related to an Assistant District Attorney. Judge, I do not want them to always get something off to the jury without having the District Attorney respond.

Mr. Talley: Likely to take one hour.

The Court: I have known you—

Mr. Talley: Don't go back too far. Be indefinite about the time.

The Court: —but I can recall about twenty years ago in Atlantic City dining with you at the hotel where you were stopping.

Mr. Talley: Beyond my memory. I was a child in arms.

The Court: But that has no bearing on being impartial.

Mr. Talley: Of course not.

The Court: I have known all the lawyers here for many [fol. 558] years. There is no difficulty in the juryman being impartial on who he knows or does not know.

Mr. Talley: If I was District Attorney, I would not let this gentleman sit in the box, after stating he knew me for twenty years. Your Honor in his discretion should excuse this juror on that statement alone.

The Court: It is so long since you have been an Assistant District Attorney I doubt you have an adequate recollection of your policy on that point.

Mr. Talley: On the contrary, my recollection about that period is very vivid.

The Court: Proceed with the examination.

Mr. Turkus: Judge Talley seems to think there is something objectionable here. May I sit down and let him interrogate on that feature of the case?

The Court: Will you proceed, please?

By Mr. Turkus:

Q. Mr. Herrick, on your knowledge of me over twenty years, can you take my word for it that I want you to be a fair and impartial juror?

A. Yes.

Q. And if you cannot be, I don't want you in the box?

A. Yes.

Q. Looking at it in the light of Judge Talley's explanation to the Court about a twenty-year acquaintance, if by one iota you cannot be fair in the case, let me know and we [fol. 559] can dispose of this thing very quickly.

A. I will be fair. That is my duty.

Q. Let me go one step further. In the charge of importance not only to The People of the State of New York, but of course to the defendants at the bar of justice, would you be inclined to favor a verdict of guilty because the case is being submitted to the jury by Burton B. Turkus?

A. No.

Q. Will you decide the one issue in the case, the guilt or innocence of the three men at the bar of justice, upon evidence that you hear in the court of justice?

A. Yes.

Q. Does the insurance business in any wise, Mr. Herrick, bring you in contact with Brownsville and East New York?

A. Yes, I have several clients in Brownsville.

Q. In your travels through the district there, have there been any discussions on this Rosen case?

A. No.

Q. Are your clients individuals or corporations in this area?

A. They are individuals.

Q. And at no time have you heard any discussion of the Rosen case?

A. No, never.

Q. Would your jury service be affected by your knowledge of people in that area? Would there be any embarrassment or reluctance on your part to serve?

A. No.

Q. Does that hold true with respect to the garment district?

A. No business there.

Q. Have you had any in the past?

A. No.

Q. Any connection, directly or indirectly, with the garment district?

A. No.

Q. Does that hold true with the garment district in Manhattan?

A. Same thing.

Q. Clothing trucking?

A. No, have not got any.

Q. Since your name appeared on this special panel as a prospective talesman, did anybody speak to you about the merits of the case?

A. No.

Q. Have you heretofore served as a juror in any criminal case?

A. Civil.

Q. If accepted as a juror in this case, will you take the law in all its aspects implicitly from Judge Taylor?

A. Yes.

Q. Are you in sympathy with the enforcement of the law of the State of New York?

A. Yes.

Q. I do not recall now whether I queried you about any possible acquaintance with any members of Mr. Geoghan's staff.

A. I knew Mr. Geoghan; I knew Frank Madden.

Q. At any time while they were in office was there any discussion with you in regard to the Rosen case?

A. No.

Q. If you are charged by the Court, as you undoubtedly will be, that defendants are presumed to be innocent, will you give the defendants the benefit of the presumption of innocence?

A. Yes.

Q. And if you are charged—and you undoubtedly will be—that the prosecution must establish guilt beyond a reasonable doubt, will you follow out those instructions of law

[fol. 561] and conscientiously endeavor to apply the principles of law to the facts of the case?

A. I will.

Q. Do you find any fault with the prosecutor of the county or with the prosecution of an indictment wherein the testimony of an accomplice witness is used?

A. No.

Q. Do you find any fault with the prosecutor or with the prosecution where the prosecutor breaks the case from the inside and avails himself of the use of a co-participant in the murder as a witness against the other defendants?

Mr. Talley: Object to the question. The form of the question is improper.

The Court: Overruled.

Mr. Talley: Exception.

Q. One of the lawyers asked, in regard to his client, whether or not you would have any prejudice against him because he has been heretofore convicted of crime and serving a term in jail. Do you feel you have any prejudice against such a defendant?

A. Not at all.

Q. By the same token, because a defendant is serving a jail term for a crime, he has been convicted of, would you be inclined to relax or deviate from your duty as a juror in a case where he is charged with murder in the first degree?

A. No.

Q. I queried several talesmen about any knowledge of people with the Amalgamated Clothing Workers of America. Was there any familiarity with the names of Potofsky, Weinstein, Katz?

[fol. 562] A. No.

Q. With Bruno Belia or Salvatore Marazzano?

A. No.

Q. Any connection with Local 240 of the Clothing Drivers & Helpers Union?

A. No.

Q. Any teamsters' or truckers' union?

A. No.

Q. Flour truckmen?

A. No.

Q. The name of Emanuel Buchalter or Phillie Buchalter at all familiar?

A. No.

Q. That of Bellanca or Tosca?

A. No.

Q. Terry Burns?

A. No.

Q. Do you know any people in the automobile rental business by the name of Weiss, operating up in the Park Slope district?

A. No.

Q. Do you have any scruple, conscientious or otherwise, against capital punishment?

A. No.

Q. If accepted as a juror in the case, would you permit anybody to discuss punishment?

A. No.

Q. Is your state of mind such that you understand and appreciate that at some time even a bad man tells the truth?

A. Yes.

Q. And is the state of your mind such that sometimes criminals do fall out and one does testify against the others?

Mr. Barshay: I object to the form of the question.

The Court: Sustained.

Q. With the defense of alibi, if it is invoked by any defendant, will you take the law implicitly from the Judge?

A. Yes.

[fol. 563] Q. Is your state of mind such that the case is of importance not only to The People of the State of New York, but to the defendants on trial?

A. Yes.

Q. If selected as a juror will you listen to reasonable and fair argument by the other jurors in the case?

A. Yes.

Q. Will you conscientiously endeavor to arrive at a just verdict in the case?

A. Yes.

Q. A verdict that will do justice not only to The People of the State of New York but to the defendants on trial?

A. Yes.

Q. After you have heard all the evidence in the case and you have talked the case over with the other jurors and your mind is satisfied beyond a reasonable doubt that there

are three guilty men at the bar of justice, Buchalter, Weiss and Capone, would you hesitate to say so in your verdict?

A. No.

Mr. Turkus: No challenge for cause.

By Mr. Barshay:

Q. Mr. Herrick, what branch of the insurance business are you in?

A. General insurance broker, all kinds, casualty and fire.

Q. Burglary insurance?

A. Burglary, automobile.

Q. Larceny insurance of automobiles?

A. That is right.

Q. And did you have any claims in the section of Brownsville?

A. No.

Q. To your knowledge, or East New York, burglary or larceny? You handle the burglary claim in stores known as [fol. 564] Abe Stark, clothier; James, the clothier; Dubrow Cafeteria?

A. No.

Q. Some other restaurants along the street where safes were blown? You never handle them at all?

A. No.

Q. You never came in contact with any claim where the name Sholem Bernstein was involved?

A. No.

Q. Are you sure about it? You don't remember that, do you?

A. I never had any claims.

Q. You don't remember it?

A. I got a music house over there.

Q. You have a music house over there?

A. Yes.

Q. Was it ever the victim of a burglary, to your knowledge?

A. No.

The Court: You have what?

The Talesman: A firm that sells musical instruments.

Q. Do you pass upon the legality of claims presented to your company?

A. I act as the broker. We service it. The company has its own claim agents, but we don't adjust their losses.

Q. I mean, have you gained an education in law with respect to burglary and larceny claims.

A. No, because we do not adjust them. We just report them to the company.

By the Court:

Q. What is the company?

A. Various companies. We do business with all the companies.

Q. Bail bond business?

A. No bail bond.

By Mr. Barshay:

[fol. 565] Q. By contact in those matters, did you gain any legal education or legal points at all with respect to burglaries or larcenies?

A. No.

Q. Or robberies?

A. No, because I never had occasion to adjust them.

Q. Then you didn't?

A. No.

Q. What companies do you write for?

A. I don't write for any company; I am a broker.

Q. With whom do you do business?

A. Various companies.

Q. Mr. Herrick, may we have some names, please?

A. Yes, you can have the New Amsterdam Casualty Company; you can have the Massachusetts Bonding Company; you can have the Hartford Accident & Casualty Company; you can have the Aetna. I will give you all you want. I can sit here a half an hour enumerating them.

Q. You are very fortunate, but we do not know those things. Do you know Mr. Kingland?

A. Mr. Kingland?

Q. Vice-president of one of the companies?

A. Joseph Kingland.

Q. Yes.

A. Yes, I know Joe.

Q. Have you ever discussed your service as a juror with him?

A. I have not seen Joe in two years.

Q. Where is your office?

A. I am not 16 Court Street, but I was in New York thirty years at 80 Maiden Lane.

Q. And do you know Mr. Turkus socially or in a business

A. I know him socially.

[fol. 566] way?

Q. Have you had any business with him?

A. Never.

Q. Have you had any business with any law firm with which he was connected?

A. No, sir.

Q. Judge Steinbrink's firm formerly?

A. Who?

Q. Judge Steinbrink's firm. Steinbrink, Delatour & Kennedy; have you had business with them?

A. No, sir.

Q. Have you had business with a Mr. Will— A lawyer who was formerly associated with Mr. Turkus?

A. No, sir.

Q. Have you had any business dealings of any kind, nature, or description with Mr. Turkus?

A. Not at all.

Q. And your knowledge of him is from the time that he was a boy up to the time he studied, practiced law and became—

A. We used to both eat in the same restaurant down here in Columbia Heights.

The Court: Where was that?

The Talesman: That was the Lido, right near the Crescent Club.

By Mr. Barshay:

Q. You have had occasion, then, to follow the progress of Mr. Turkus?

A. Yes.

Q. Take a great deal of pride in what he is doing?

A. That is right.

Q. And on occasions, sir, I take it that you made inquiries at the lunch table or in the restaurant concerning some case where his name was in the newspaper?

[fol. 567] A. No.

Q. Did he ever talk about them?

A. No.

Q. I don't mean immodestly.

A. No, I never discussed them.

Q. You never talked to him about his elevation for the high office of Assistant District Attorney?

A. No.

Q. Never at all?

A. No.

Q. Did you ever hear him lecture?

A. Did I ever hear him lecture?

Q. Yes.

A. No.

Q. On any subject whatever?

A. No, sir.

Q. Did you ever go out with him socially?

A. No.

Q. At any rate, you have a very high opinion of his integrity, of course?

A. I have, yes.

Q. Supposing, Mr. Herrick, there comes a time in this case, supposing there comes a time in this case that the defense counsel tried to draw from a witness for the prosecution the fact that his testimony came as a result of his being induced to testify in order to gain some reward for himself, and supposing it came out that Mr. Turkus was one of the men who participated, if he did, in this inducement, and supposing the time came——

Mr. Turkus: I object to any such supposition.

The Court: Finish the question.

Q. —and supposing the time came for you as a juror to decide whether or not Mr. Turkus made any inducement or held out any inducement to that witness, even though he does [fol. 568] deny it, not he, Mr. Turkus, but the witness, and it became a question of the credibility of the witness, would the fact that you know Mr. Turkus and have such a high regard for his integrity, influence you in deciding one way or the other?

A. No.

Mr. Turkus: I object. Well, he has answered.

By the Court:

Q. Do you know Mr. Hughes, the Chief Assistant?

A. No. In the District Attorney's office?

Q. Yes.

A. No, I do not.

Q. He belongs to the club on your square block.

A. On my block? There is no club house.

Q. 8th Avenue?

A. You mean the Democratic club?

Q. Between 9th and 10th.

A. Yes, I know.

Q. That is around the corner from you?

A. That is right, Heffernan's.

Q. You don't belong to that club?

A. No, I do not.

Q. You live there how long?

A. Twenty-three years.

By Mr. Barshay:

Q. Do you belong to any political club?

A. No, sir.

Q. Have you ever belonged?

A. No, sir.

Q. Do you know Judge O'Dwyer?

A. Well, I only know him by his picture, that's all.

Q. You don't know him personally?

A. No.

Q. Have you, without belonging to any club, joined any independent organization for his elevation to the office of the Mayor?

[fol. 569] A. No, sir.

Q. Have you been solicited by independent folk for a contribution?

A. No.

Q. Do you intend in any way whatever to participate in the election of Judge O'Dwyer?

A. No. I signed a petition for him.

Q. I beg pardon?

A. I signed a petition.

Q. You signed a petition in the primary?

A. Yes, sir.

Q. That was because someone solicited it?

A. A neighbor.

Q. And do you partake or do you propose to partake in any organization committee for his election, irrespective of politics?

A. No.

Q. Any member of your family?

A. No.

Q. Engaged in politics?

A. No.

Q. The fact that he is a candidate, of course, I know would not affect your judgment in any degree?

A. No.

Q. He would not want that to happen. Now, Mr. Herrick, supposing it comes time in this case to sum up, let us say one of the counsel for any of the defendants interprets a fact in a way which is contrary to the way in which Mr. Turkus in his summation will sum up that same fact, he will interpret it differently—in other words, I may see an issue in one respect and he may see the same issue in an entirely different respect, would the fact that you know him for all those twenty years and have such a high regard for him influence you to the point that you may be inclined to accept the version placed upon that particular point or any points [fol. 570] or all points placed upon it by Mr. Turkus?

A. That is possible.

Q. So that in the last analysis, when you will have to weigh part of Mr. Turkus himself, not as an individual, but as a person who sponsors a given cause, then in the scale against the defendants will be the knowledge that Mr. Turkus has been known to you for twenty years, isn't that so?

A. That is right.

Q. And that may be prejudicial to any one of the defendants or to all of them?

A. That is right.

Q. You would not be able to help yourself under those conditions, would you?

A. I would be a little shaky.

Q. And that would not be fair to any of the defendants?

A. That is right.

Q. And you know now that we each represent opposite views in this case?

A. Yes.

Q. So you start off shaky, don't you, isn't that so?

A. That is right.

Q. And that would be to the prejudice of any one of the defendants? That is your honest answer?

A. That is my honest opinion.

Q. You feel that way?

A. That is the way I feel.

By Mr. Rosenthal:

Q. Isn't it true, Mr. Herrick, that the quality of proof that would be required from the defendant or from The People would be of a different degree than what would be [fol. 571] necessary because of your personal knowledge of Mr. Turkus and your belief in his integrity?

A. Yes.

Mr. Barshay: On behalf of all counsel we challenge the juror for cause.

The Court: Try the challenge.

JOSEPH O. HERRICK, of 667 Tenth Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Barshay:

Q. Mr. Herrick, if I were to ask you the same questions under oath as you were asked before you were sworn, would you make the same answers?

A. I would.

Q. Substantially to the effect that there may come a time when you would have to be prejudiced against one or all of the defendants?

A. Yes.

Mr. Barshay: Press my challenge.

Mr. Turkus: Mr. Herrick, I thank you for your high regard. I coincide. I agree that the challenge shall be sustained.

The Court: The Court has not agreed.

Mr. Turkus: That is all I can do.

By the Court:

Q. You think you will show favoritism?

A. It is possible I would.

Q. In a case where death is the penalty, you would show favoritism?

A. I am a little bit afraid.

[fol. 572] Mr. Talley: It is extremely difficult for us down here to hear everything you say. I do not like to be bobbing up and reminding you of that, Judge, but it is a great detriment to us.

The Court: It may be that there is not sufficient quiet down there. I do not know. I don't repeat, but the stenographer will.

(The stenographer read as requested.)

Q. In the years you have known Mr. Turkus he has been most of the time in the defense of criminal cases; is that not right?

A. I believe so.

Q. If you know him very well?

A. I knew him. I know him where he used to eat in the restaurant. I knew he was a promising young attorney, but I did not know whether he handled civil or criminal cases.

Q. You just know him from eating in the restaurant?

A. Yes, we used to meet there every day and talk.

Q. Talk about cases?

A. Oh, no, talk about different other things.

Q. Did he ever tell you where he lived?

A. No, he did not tell me where he lived.

Q. Did he ever tell you where he went on vacation?

A. No.

Q. Did he ever tell you whether or not he was married?

A. I don't think he is married.

Q. Did he ever tell you that?

A. No, he did not, your Honor.

[fol. 573] Q. Did he ever tell you anything of an intimate, personal nature?

A. No.

Q. Did you ever have any conversation with him of a strictly friendly nature?

A. Why, no. We talked about the weather or maybe politics.

Q. Just table talk?

A. Table talk.

Q. Do you call that friendship?

A. Well, I don't know.

Q. Don't laugh, because you made a statement here which is rather astounding, that you would allow a restaurant-table acquaintanceship to convict men of murder as a substitute for evidence. I want to know whether you are sincere in making that statement.

Mr. Barshay: I object to that question, if your Honor pleases.

The Court: Overruled.

Mr. Barshay: Exception.

Q. Will you please answer that, sir?

A. We used to sit and talk and have our dinner.

Q. I want an answer to that question.

A. What is the question, your Honor?

Q. Oh, you did not listen.

A. We had some interruption.

Q. The stenographer will read it.

(Question read by the stenographer.)

Q. Is that what you are trying to put across?

[fol. 574] A. I am not trying to put anything across, your Honor.

Q. Is that your attitude

The Court: I sustain the challenge, upon the ground the man is wholly unfit to have a job as juror. Get out.

Mr. Talley: If your Honor pleases, I, with great respect—

The Court: Sit down, please. This gentleman will leave at once, and there will be perfect order until he gets out of this room.

Mr. Talley: I object—

The Court: Exception to all counsel for the defendants.

Mr. Talley: I take the exception, if your Honor pleases, but I wish to make a further statement than that, and that is my objection.

The Court: No statement. Call the next juror.

Mr. Talley: May I not record my objection and exception to your Honor's statement to this juror?

The Court: Your exception is on the record, sir.

Mr. Talley: No, my exception is not on the record to your statement, and I move now—

The Court: The Court directs an exception be entered on behalf of all counsel for defendants.

Mr. Talley: I wish to have the record show that I object on behalf of all counsel to your Honor's statement [fol. 575] to the talesman who has just been excused, upon the ground that it has a tendency to prevent a fair expression of opinion on the part of talesmen, and it will be

difficult, and I think it makes it difficult for us, to get the fair and impartial jury that we are seeking.

The Court: Are you all through, Counsel? Please proceed with the examination.

Mr. Talley: I except to your Honor's statement and I note my exception to your Honor's statement on my objection.

The Court: Go ahead, Mr. Turkus.

JOHN M. PLEIL, of 1151 Troy Avenue, Brooklyn, was examined as to his qualifications.

Mr. Turkus: May I ask for a recess at this time? That was a distressing incident for me, your Honor.

The Court: No.

By Mr. Turkus:

Q. What section is that?

A. Flatbush.

Q. Have you lived there a number of years, Mr. Pliel?

A. About seventeen.

Q. You are listed here as an assistant buyer.

A. That is right

Q. And by whom are you employed, sir?

A. Lorillard Tobacco Company.

Q. Is that P. Lorillard & Company?

A. That is right.

[fol. 576] Q. Have you been there for a number of years?

A. Twenty.

Q. Is there anything about the nature of the charge in this case in which Buchalter, Weiss and Capone are charged with the crime of murder in the first degree which would prevent you from being a fair and just juror in the case?

A. No.

Q. Have you any scruple, conscientious or otherwise, against capital punishment?

A. No.

Q. If selected as a juror in the case, would you permit anybody to talk punishment to you?

Mr. Climenko: I object to the form of the question.

The Court: Sustained. It is a law question.

Q. Is your frame of mind such that you would not discuss the question of punishment in the jury room if selected as a juror?

A. No.

Q. And will you decide the issue in the case, the issue of guilt or innocence, upon the evidence that you hear in the court-room and nothing else?

A. That is right.

Q. Heretofore has business or social contacts brought you in touch with anybody in the Brownsville-East New York area of Brooklyn?

A. No.

Q. Or in the garment district in Manhattan?

A. No.

Q. The clothing district?

A. No.

Q. Or clothing truckers?

A. No.

Q. Since your name appeared on the special jury list and since you received your notice in this case, did anybody [fol. 577] speak to you about the case?

A. Just friends.

Q. Was that in regard to the possibility of serving on the jury.

A. Yes.

Q. Was there anything said about the merits of the case?

A. Well, some remarks was made.

Q. Were they people that you knew?

A. Yes, sure, in my office.

Q. Office employees?

A. That is right.

Q. It was a matter of curiosity on their part?

A. That is right.

Q. Was it in connection with arrangements in the event that you were selected as a juror?

A. No.

Q. Do you sit in the jury box now free of prejudice against the defendants?

A. Right.

Q. You do?

A. Yes.

Q. Are you in sympathy with the enforcement of the Penal Law of the State of New York?

A. Right.

Q. There are nine lawyers in the case, former Assistant District Attorney Barshay, former Assistant United States Attorney Wegman, and Mr. Climenko all representing the defendant Buchalter. Do you know any of those lawyers?

A. None of them.

Q. Anyone connected with their law offices?

A. No.

Q. Do you know any member of the bar intimately who specializes in the defense of criminal cases?

A. No, sir.

Q. Do you know former Judge Talley?

A. No.

[fol. 578] Q. Former Assistant District Attorney Cuff?

A. No.

Q. Or former Assistant United States Attorney Kriendler?

A. No, sir.

Q. Anybody connected with their law office?

A. No.

Q. Does the same hold true with counsel for Capone, Messrs. Rosenthal, Fischbein, and Rosenberg?

A. I don't know them.

Q. You do not know anyone connected with their law offices? With respect to the District Attorney of the county, do you know Judge O'Dwyer?

A. No, sir.

Q. Do you know any member of his staff, intimately?

A. No.

Q. Specifically, do you know Mr. Turkus, Mr. Joseph, or Mr. Klein?

A. No.

Q. Did you know the former prosecutor of the county, Mr. Geoghan?

A. No, I did not.

Q. Or any member of his staff?

A. No.

Q. If selected as a juror in this specific case, will you take the law exclusively from the trial judge?

A. I will.

Q. I take it that, having been seated in this box now you have heard discussion by various of the lawyers as well as the prosecutor in regard to accomplice testimony. Have you heard that?

A. Yes, sir.

Q. Do you have any bias against the prosecutor of the county for breaking a case from the inside and using the testimony of a co-participant in the crime against the remaining defendants on trial?

[fol. 579] Mr. Talley: Object to the question in substance and in form. It is objectionable on both grounds.

Mr. Turkus: Question overruled six times.

The Court: Overruled.

Mr. Talley: I ask it be overruled every time it is asked.

The Court: Same ruling.

Mr. Talley: Same exception.

Q. (Pending question read.)

A. No.

Q. Before I continue with that, I just want to make sure about any possible connection in any shape or form with officials of the Amalgamated Clothing Workers of America.

A. No, sir.

Q. Is there anything familiar to you about the names of Potofsky, Weinstein, and Katz affiliated with the Amalgamated?

A. No.

Q. Is there anything familiar about the name of Bruno Belia an organizer of the Amalgamated?

A. No.

Q. An individual by the name of Salvatore Marazzano, is there anything familiar about that name?

A. No.

Q. Is the name Philip Orlofsky, a one-time manager of the Cutters Union, Local 4 of the Amalgamated, at all familiar to you?

A. No, sir.

Q. Do you have any contact or connection in any degree, shape or form with any official of Local 240 of the Clothing Helpers & Drivers Union?

A. No.

[fol. 580] Q. Or of any Teamsters Union?

A. No.

Q. Any familiarity with the name of Silverman, Max Silverman, or Wolfie Goldis?

A. No.

Q. Or that of Willie or William Alberts, a one-time bondsman?

A. No.

Q. The name of Emanuel Buchalter, is that at all familiar?

A. No.

Q. Or Philip Buchalter, sometimes known as Philip Kowas?

A. No.

Q. Bellanca and Tosca, are those names familiar?

A. No.

Q. Terry Burns?

A. No.

Q. Is your frame of mind such that even a person of bad character may on occasion tell the truth?

A. Would you mind repeating it?

Q. Yes. Is your frame of mind such that even a person of bad character may, on occasion, tell the truth?

A. Sometime.

Q. Have you any inherent bias or prejudice against testimony coming from an accomplice which would cause you to disregard the testimony?

Mr. Rosenthal: I object to the question. The law is that he must disregard it unless corroborated.

The Court: Overruled.

Mr. Rosenthal: Exception.

Q. (Pending question read.)

A. No.

Q. You have no inherent bias or prejudice against testimony coming from an accomplice solely because he is an accomplice; is that correct?

A. No.

Q. Will you follow the instructions of law as given by the Judge as to the weight and credibility to be given to that type of witness?

A. No.

Q. If you find that the testimony of an accomplice is corroborated by other evidence tending to connect the defendants with the commission of the crime, and you are satisfied from the evidence that the accomplice is telling the truth, that the other evidence does tend to connect him with the commission of the crime, and you are satisfied of that beyond a reasonable doubt, would you hesitate to say so by your verdict of guilty?

A. No.

Q. Is there any reason concerning which I as yet have received no response which goes to your qualification as a juror in the case?

A. What is that?

Q. I will withdraw it in that form. Is there anything that I have not yet brought out that both sides should know affecting your qualifications to sit as a juror? I will revise it again: Is there any reason why you cannot be a fair and impartial juror in the case?

A. I do not know. I read quite a few articles in the paper and talked about the case.

The Court: We will continue this tomorrow morning. Be here at ten o'clock.

The question came up before as to why the Court thinks it advisable not to swear except in group, unless it be otherwise decided during the course of the questioning of jurors. Section 387 of the Criminal Code provides "The first twelve persons to appear, as their names are drawn and called, who are approved as indifferent between the parties and [fol. 582] are not discharged or excused, must be sworn: and constitute the jury to try the issue." This is upon the selection of twelve people. Meeting that requirement would require the administration of the oath, and they would then constitute the jury. The Court in its discretion has followed the practice in other cases of swearing individually from time to time as the case progresses, but here is a practical difficulty. It is the intention of the Court, on account of the extreme delay, on account of the length of time it has taken to select the jury in this case, not to subject those who have been tentatively selected to the inconvenience of being housed. The effect of that may be to make jury service intolerable. The housing will commence when we are ready to take the evidence, not before. Allowing jurors to go home, even with the instruction of the Court against reading, against talking, and against listening to the radio, about the case, would, in event of such jurymen being sworn, prevent his being later on questioned as to what might have happened by way of contact in the interim in which he was permitted to go home, and I think in this case that would be unwise. That is the reason for the Court exercising its discretion in this manner. Later on, if you make more speed—and I say this not critically—[fol. 583] the situation may develop differently, but it is a sorry production so far.

(To talesmen.) Gentlemen, you may go now, and be in your place at ten o'clock tomorrow morning.

You are admonished not to talk about the case, not to discuss it, not to allow anybody to talk to you about it. Do not read about it; do not listen to the radio or otherwise about it. Keep your minds open.

The defendants are remanded.

(Adjourned to Thursday, September 25, 1941, at 10 o'clock a.m.)

[fol. 584]

Brooklyn, N. Y., September 25, 1941.

Trial Resumed

JOHN M. PLEIL, was examined further as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. In examination of the other prospective talesmen, one of the lawyers directed attention to the fact that there is only a single issue in the case, the issue being whether these three men at the bar of justice, Buchalter, Weiss, and Capone, are guilty of murder in the first degree, in the murder of Joseph Rosen, do you understand that?

A. Yes, sir.

Q. I think we got to the point where you stated you would be willing to take the law from the Court in all of its aspects.

A. Yes, sir.

Q. Is your state of mind such that you appreciate this is an important case, important both to The People of the State of New York and to the defendants at the bar?

A. Yes.

Q. If selected as a juror, will you conscientiously endeavor to arrive at a just verdict in the case?

A. Yes.

Q. If selected as a juror, will you deliberate with your fellow jurors with common sense, understanding, and without rancor or bitterness?

A. Yes, sir.

Q. If you are selected as a juror, and after you hear all of the evidence in the case, and after you have heard the [fol. 585] lawyers argue the inferences they draw and the

inferences the prosecution may draw with respect to the evidence, and his argument to the jury, and you listen to the learned Court on the law, will you discuss the case with fairness and with reason and with common sense with your other jurors, and when you come to a conclusion beyond a reasonable doubt that there are three guilty men at this bar of justice, three men guilty of the murder of Joseph Rosen, would you hesitate to say so in your verdict?

A. No, sir.

Q. Would you have any fear or hesitation or reluctance?

A. No, sir.

Mr. Turkus: No challenge for cause.

By Mr. Climenko:

Q. Mr. Turkus asked you a question yesterday as to whether you knew of any reason why you could not listen fairly to the evidence in this case—I don't know whether you finished your answer to that question at the time we recessed. Do you remember that question?

A. Yes.

Q. Will you answer that question now, and tell us is there any reason in your mind at the present time which would interfere with your impartial consideration of the case?

A. I said that I talked to my friends about the case.

Q. You have talked with your friends about the case?

A. Yes, sir.

Q. Anything else?

A. No, sir.

[fol. 586] Q. Have you read about the case?

A. Yes, sir.

Q. What newspaper did you read?

A. I read it in the *Mirror*, some articles.

Q. Beginning when, so far as you remember?

A. I read several articles.

Q. In what month?

A. In this month.

Q. Did you read those articles in the *Mirror* as it is distributed in the Borough of Brooklyn?

A. Yes, sir.

Q. In other words, you bought that copy in Brooklyn?

A. Yes, sir.

Q. From the reading of these articles, did you form an impression which was adverse to any of the defendants?

A. It only created some impression on me.

Q. As you sit here now do you have that impression which you gained from these articles?

A. Yes, sir, you cannot dispense all of it.

Q. You cannot completely dispense the impression you gained from reading those articles?

A. No, sir.

Q. And the opinion which you derived from the reading of these articles is one that is unfavorable to at least one of the defendants?

A. Yes, sir.

Q. As you sit here now you have that unfavorable opinion with you?

A. I still have it.

Q. Would it require the production of evidence on behalf of that defendant in order to dispense that opinion from your mind?

[fol. 587] A. Yes, sir.

Mr. Climenko: I challenge this talesman for cause.

The Court: Try the challenge.

JOHN M. PLEIL, No. 2819 was then sworn and examined on the challenge.

By Mr. Climenko:

Q. Now that you have been sworn, were I to repeat the questions I just put to you, would your answers be the same?

A. Yes, sir.

Mr. Climenko: May it please your Honor, I press the challenge.

Mr. Cuff: All of the defendants join in pressing the challenge.

The Court: Any further questions by counsel for the defense?

Mr. Barshay: No.

By Mr. Turkus:

Q. I believe when we discussed the matter yesterday you said you had had no prior jury service.

A. No, sir, I did not.

Q. Consequently you never heard a judge charge a jury with respect to a criminal case?

A. No, sir.

Q. Our law is that the defendant has no burden in a criminal case, that is, that burden is upon the prosecutor to establish guilt beyond a reasonable doubt.

A. Yes, sir.

Q. And the defendant need offer no evidence at all, and [fol. 588] if he desires he may sit mute, and if he sits mute, no unfavorable inference may be drawn; that is our system of jurisprudence here. Do you find any quarrel with that type of law—is it repugnant to your sense of justice?

A. No, sir.

Q. If you were charged by this Court this law, would you endeavor conscientiously to apply these principles of law to the case?

A. I would try.

Q. Now that you are aware that the defendant need offer no defense at all in a criminal case, would you still expect the defendant to do so?

A. Yes.

Q. In this particular case?

A. Yes, sir.

Q. Is your opinion such that you could not lay it aside and decide the case upon the evidence?

A. I don't think so.

Q. Let me take a few more steps with you and then I think we can finish this up very quickly. Of course, to establish guilt beyond a reasonable doubt, you must necessarily expect the prosecutor to give you evidence?

A. Yes, sir.

Q. You would not expect the prosecutor to take a newspaper and submit that to the jury in lieu of testimony, would you?

A. No, sir.

Mr. Climenko: I object.

The Court: Objection overruled.

Q. Cognizant of the law that the prosecutor must establish guilt beyond a reasonable doubt, upon testimony; is there anything you have read in those newspaper articles [fol. 589] that has made such an impression on your mind you could not lay it aside?

A. I read quite a bit, and my mind was made up after I formed an opinion about the defendants. I tried to cast it aside, but I cannot.

Q. You are telling me frankly and fully?

A. Yes, sir, that is my honest opinion.

The Court: Challenge sustained.

ANDREW A. MERRICK, No. 2684, residing at 107 Garfield Place, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. The trestle board lists your address as 107 Garfield Place.

A. Yes, sir.

Q. That is in the Park Slope section?

A. Yes, sir.

Q. Have you lived in that section for a number of years?

A. Thirty years.

Q. You likewise are listed here as having some connection with insurance. We need further information. Are you a broker?

A. No, sir, a clerk, office work only.

Q. By what company are you employed?

A. The Equitable Life.

Q. Have you worked there for a number of years?

A. Yes, sir.

Q. More than five?

A. Fifty years next February.

Q. I take it by now you are familiar with the nature of the charge, namely, that the three men at the bar of justice, [fol. 590] Buchalter, Weiss, and Capone, are charged with murder in the first degree, the murder of a man named Joseph Rosen.

A. Yes, sir.

Q. Is there anything about the nature of the charge, namely, that of murder, which would preclude you from being a fair and impartial juror in the case?

A. None whatever.

Q. I take it you have no conscientious or other scruples against capital punishment?

A. None, sir.

Q. And if selected as a juror in the case, will you decide the case from the evidence and not from the common standpoint of punishment?

A. Yes, sir.

Q. If selected as a juror, would you permit any other juror to discuss punishment?

A. No, sir.

Q. There are questions we must get from you individually. I know you will understand when I repeat them that it is a case of necessity and not of desire, as, for instance, has your business or has any social contact given you any connection with the field in Brownsville or the East New York area of Brooklyn at any time?

A. No, sir.

Q. Have you had any connection in the past or have you presently, with any person or with any firm in the garment district of Manhattan?

A. No, sir.

Q. Or with anyone connected with the clothing district in Manhattan or on the Brooklyn waterfront?

A. No, sir.

Q. Are you acquainted with or do you know any official of the Amalgamated Clothing Workers of America?

A. No, sir.

[fol. 591] Q. Specifically, is there anything in connection with the names of Jacob Potofsky, secretary or treasurer of the Amalgamated, with Murray Weinstein, manager of the Clothing Cutters Union, Local No. 4 of the Amalgamated, or Samuel Katz, business agent of the local, that suggests itself to your mind?

A. No, sir, never heard of them.

Q. Is there any familiarity about the name of Bruno Belia, an organizer at the home office of the Amalgamated?

A. No, sir.

Q. Or with Salvatore Marazzano?

A. No, sir.

Q. Have you had any contact in any way, shape, or form with any official of Local No. 240 of the Clothing Drivers & Helpers Union or of the Teamsters Union?

A. No, sir.

Q. Have you any familiarity with the name of Max Silverman or Wolfie Goldis?

A. No, sir.

Q. Is the name Philip Orlofsky, one-time manager of the Clothing Cutters Union, affiliated with the Amalgamated, at all familiar to you?

A. No, sir.

Q. Or the name of William or Willie Alberts, a one-time bondsman; does that mean anything to you?

A. No, sir, I don't think I ever heard of that name.

Q. Emanuel Buchalter or Philip Buchalter.

A. I have seen those names in the paper.

Q. Other than seeing those names in the paper, is there any familiarity with those names?

A. Well, I think I heard of them before.

[fol. 592] Q. You think you have read something?

A. I seen those names in the newspaper before.

Q. Other than the familiarity with the names you gathered from reading the newspaper, do those names mean anything to you other than having read them?

A. No, sir.

Q. Outside of reading them?

A. I saw the names in the newspaper; that is all.

Q. Have you any familiarity at all with the names of Bellanca or Tosca?

A. No, sir.

Q. Does the name of Terry Burns mean anything to you?

A. No, sir.

Q. Or Abe Slabo?

A. No, sir.

The Court: It is possible there may be a misunderstanding among counsel as to the understanding of the Court's previous ruling against the use of alleged aliases as names in advance of proof. That ruling does not go so far as to prevent counsel for either side from probing as to the impression derived by talesmen from publicity in the use of these alleged aliases. If any questions are asked in that regard, the particular defendant to whom they are supposed to apply shall not be mentioned to the talesman in advance of proof.

By Mr. Turkus:

Q. May I go along with the understanding you have had no connection with any firms or individuals in the clothing district, the clothing trucking industry, or the garment district in Manhattan?

A. That is true, I never had.

Q. Since your name appeared on this special panel, and specifically since you yourself received your notice to act as a prospective juror in this case, did anybody speak to you about the case?

A. No, sir.

Q. Are you in sympathy with the enforcement of the Penal Law of the State of New York?

A. Yes, sir.

Q. There are various lawyers representing the defendants at the bar. Do you know Mr. Barshay, a former Assistant District Attorney?

A. No, sir.

Q. Or Mr. Bertram Wegman, a former Assistant United States Attorney?

A. No, sir.

Q. Or Mr. Climenko?

A. No, sir.

Q. They are counsel for the defendant Buchalter.

A. No, sir.

Q. Do you know anyone associated with them in the practice of law, or employed in their office?

A. I cannot think of any.

Q. The defendant Weiss is represented by former Judge Talley, former Assistant District Attorney Cuff, and former Assistant United States Attorney Kreindler. Do you know any of them?

A. No, sir.

Q. Or anyone employed in their office or associated with them?

A. Not as I know of.

Q. The defendant Capone is represented by Mr. Sidney Rosenthal, Mr. Fischbein, and Mr. Rosenberg; do you know any of those?

[fol. 594] A. No, sir.

Q. Or anyone associated or connected with their offices?

A. No, sir.

Q. Do you know Mr. Geoghan, the former prosecutor of this county, personally?

A. Yes, sir.

Q. Do you know any member of his staff?

A. Yes, sir.

Q. Who are they?

A. Mr. Kelly, Dr. O'Reilly, the Medical Examiner, he is dead some years.

Q. Did you know Mr. Barshay when he was in that office?

A. No, sir.

Q. Was your contact with Mr. Geoghan an intimate one?

A. No, sir, I knew him slightly; I was introduced to him and I knew him just enough to salute him on the street, and Mr. Kelly I knew fifty years; I went to school with him.

By the Court:

Q. You lived in the Heights section at one time?

A. No, sir, on Conduit Street, and he lived in that section, and I went to school with him; I knew him for years. I became acquainted with him as a schoolboy.

Q. You are now on Garfield Place?

A. Yes, sir, between 5th and 6th Avenues.

Q. What particular line of accounting are you connected with in the Equitable?

A. I have a position called Assistant Registrar, signing documents, different papers.

Q. You have been in the accounting department of the [fol. 595] Equitable for a good many years?

A. I have been in the policy department most of the time.

Q. For how many years?

A. I will be there fifty years next February.

By Mr. Turkus:

Q. I take it you started to work in your teens?

A. The first position I ever had.

Q. You were under twenty when you got that job?

A. Much younger.

Q. The reason for that is because there is an age limit.

A. There wasn't any then.

Q. You were in your teens when you went to work?

A. Yes, sir; I will tell you my age, if you want me to.

Q. No, that is all right. I think a man has Constitutional rights.

A. I started as an office boy.

By the Court:

Q. That was under Mr. McCall—that was Mr. McCall, who was afterwards a Supreme Court Judge?

A. Yes, sir,

Q. Mr. McCall was attorney for the Equitable?

A. Yes, sir.

By Mr. Turkus:

Q. Do you find any fault or have you any bias against the — of the county, Judge O'Dwyer, or against the prosecution of an indictment where the District Attorney breaks the case from the inside and employs the use of accomplice testimony to testify against the co-conspirators in a case?

[fol. 596] Mr. Talley: That is objected to.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. The charge here is for the murder of Joseph Rosen on September 13, 1936, at the time when there was another prosecutor. Because of your knowledge of this occasion, would you have any resentment against the prosecutor now or against the prosecution wherein this case has been broken from the inside since by the new prosecutor?

A. No.

Mr. Talley: I object to the question as improper in form and in substance.

The Court: Objection overruled.

Mr. Barshay: I object. It assumes a state of facts which are not part of the record.

The Court: Objection overruled. Exception to defendants.

By Mr. Turkus:

Q. Is your state of mind such you feel that even a man of bad character and reputation and of past bad conduct can sometimes tell the truth?

A. Yes, sir.

Q. If accepted as a juror will you use the common sense and understanding you have got in weighing the issue and in saying whether an accomplice has told the truth and whether there is other evidence tending to connect the defendants with the commission of the crime?

[fol. 597] A. I would.

Q. Will you take the law in every aspect from Judge Taylor and from nobody else?

A. I will.

Q. If selected as a juror will you endeavor, conscientiously, to arrive at a just verdict?

A. Yes, sir.

Q. If accepted as a juror will you listen to fair and reasonable discussions by your fellow jurors as you go into the jury room and deliberate upon the issue of the case?

A. Yes, sir.

Q. Do you, in your every-day business experience, have occasion to confer with others in settling disputes or problems that may arise?

A. No, sir.

Q. Is your business more or less routine work?

A. Clerical, that is all.

Q. Do you know Judge O'Dwyer, District Attorney of the county, personally?

A. No, sir, I do not know him personally.

Q. Do you know any member of his staff personally?

A. Yes, sir.

Q. Who?

A. Mr. Hughes, the Chief Assistant.

Q. You know him over a period of years?

A. Over forty years.

Q. Have you discussed any of the work of Judge O'Dwyer with him?

A. Not with him; I have not seen him in over a year.

Q. Specifically, do you know Assistant District Attorneys Joseph or Klein or Turkus?

A. No, sir.

Q. Will you endeavor, if selected as a juror, to conscientiously apply the principles of law that Judge Taylor will give you in charging you on the facts in this case?

A. Certainly.

Q. You will listen to their discussion and argument?

A. Yes, sir.

Q. You will endeavor, conscientiously, to arrive at a just verdict?

A. I will.

Q. Assuming that you are accepted as a second juror in the case and you have heard all the evidence in the case, all the evidence presented, and then the lawyers for the defense go before the jury, as they will have a perfect right to do, and draw inferences from testimony as they see it, and then the prosecutor draws inferences from the testi-

mony as the prosecution views it, and then you have the benefit of the Judge's instructions on the law, and you go into the jury-room and talk the case over with common-sense understanding with the other jurors, and you are satisfied beyond a reasonable doubt that at this bar of justice in the County Court of Kings County are three guilty men, guilty of murder in the first degree, the murder of Joseph Rosen, would you hesitate to say so in your verdict?

A. I would not.

Q. Would you have any fear or reluctance?

A. Not the slightest.

By Mr. Talley:

Q. I believe the same thing would apply to the condition of mind you would be in at the conclusion of all the evidence, [fol. 599] if you were not satisfied beyond a reasonable doubt that these men are guilty of the crime with which they are charged, you would not hesitate to acquit them?

A. No, sir.

Q. Have you sat as a juror in a criminal case?

A. Yes, sir.

Q. Frequently?

A. In 1928.

Q. Not since?

A. No, sir.

Q. Was that in this County Court, in Brooklyn?

A. No, sir. It was in the other building, the Supreme Court, before Judge Callahan.

Q. Have you sat as a juror in civil cases?

A. No, sir.

Q. And not since 1928 have you sat in a criminal case?

A. I have not sat since then.

Q. When you sat in 1928 in a case or cases upon which you did sit as a juror, were they put in the hands of the jury for deliberation?

A. Yes, sir.

Q. You understand that the burden is always upon the District Attorney representing the People to prove the guilt of the defendants and to prove it beyond a reasonable doubt?

A. Yes, sir.

Q. And that is the burden he assumes when he undertakes the prosecution of any case?

A. Yes, sir.

Q. If the Court charges you that a reasonable doubt is the kind of a doubt a man might have about any of the ordinary affairs of life, and if after hearing that charge you are not satisfied beyond a reasonable doubt of the guilt of these defendants or any of them, you would acquit them? [fol. 600] A. Yes, sir.

Q. Although you have not seen Mr. Hughes, the Chief Assistant District Attorney, you have not talked to him for a year, you knew him pretty well?

A. Yes, sir, I went around with him years ago when he was studying law.

Q. It goes back that far?

A. Yes, sir, over forty years.

Q. And now he holds the exalted position of Chief Assistant District Attorney of the County of Kings?

A. Yes, sir.

Q. Would the fact that he occupies that important position, right next to District Attorney O'Dwyer, have any influence upon your consideration of this case?

A. Not the slightest.

Q. You are sure about that?

A. Positive.

Q. Are you a member of any political organization?

A. No, sir.

Q. Do you expect to be active in any way in the forthcoming Mayoralty election in which O'Dwyer is a candidate?

A. No, sir.

Q. Do you know anybody in the District Attorney's office besides Mr. Hughes?

A. That is all I know to my knowledge.

By the Court:

Q. Is that a church affiliation?

A. With Mr. Hughes?

Q. Yes.

A. No, sir, I went around with him about forty years ago; he lived about five blocks away from me at that time.

Q. He lives on the Park Slope now?

A. He lives on 14th Street now.

[fol. 601] Q. Near where?

A. I think between 8th and 9th Avenue. At that time he had a friend, a doctor, a young man studying medicine.

By Mr. Talley:

Q. You just keep your voice up, please.

By the Court:

Q. The fact you knew Mr. Hughes as a boy and went around together, lived within a few blocks of one another, and Mr. Hughes now lives on 14th Street between 8th and 9th Avenue, which is a little over a half a mile or a good mile from where the talesman at present lives, but in the same general section, that would not affect you?

A. No, sir.

By Mr. Talley:

Q. You're interested in Mr. Hughes' career?

A. Yes, sir.

Q. You like to see him get ahead?

A. He has gotten ahead.

Q. And you would like to see him go further than he has gone?

A. Yes, sir.

Q. If you thought the conviction of these defendants, and the prosecution of the defendants by the office of which Mr. Hughes is Chief Assistant, would help him progress, would you be inclined to consider that?

A. No, sir, I would not want to see him get ahead that way.

Q. Have you read anything about this case?

A. Yes, sir.

Q. You read quite a bit?

A. Quite a little, yes, sir.

Q. You read the articles in the *Mirror*?

[fol. 602] A. I have read some of those articles.

Q. Have you read them all?

A. No, sir, not lately.

Q. You read most of them?

A. Yes, sir.

Q. Have you read them since you have been summoned as a juror in this case?

A. I read them before that, but we were told not to read them.

Q. You have read them since you received the notice?

A. No, sir, I have not had the time since.

Q. Did you read any articles in the *Mirror* for these last three weeks?

A. Yes, sir, I have.

Q. As a result of reading these particular articles, referring to the *Mirror* articles, did you form an unfavorable impression about any of these defendants?

A. Well, I can say I did not form a favorable one, because I have been reading quite a number of articles in the newspaper at other times on other days, about certain conditions.

Q. As a result of reading those articles about the certain conditions to which they referred, did you form an unfavorable impression of any of these defendants on trial?

A. At that time I did.

Q. And nothing has happened since then to change your impression, has it?

A. No, sir, I am not on the jury yet.

Q. So you still have an unfavorable impression?

A. It is not a very favorable one.

Q. You still have one?

A. Slightly, yes, sir.

[fol. 603] Q. And the recent things you read in the newspaper have kind of reinforced the strength of that unfavorable impression?

A. It kind of brought certain things to mind I had read before.

Q. If you have an unfavorable impression about these defendants, or any of them, at the start, as you say you have now, it would take some evidence in this case to remove that impression, wouldn't it?

A. It will, yes, sir.

Q. And that evidence would have to be furnished by these defendants in some manner or other, wouldn't it?

A. Well, I would listen to both sides, and naturally render a just verdict according to my conscience.

Q. If you were accepted, in order to remove that unfavorable impression from your mind, some evidence would have to be produced?

A. Yes, sir.

Q. For you to necessarily and naturally become favorable of the defendants?

A. Yes, sir.

Q. And other than the matter about which I have just been interrogating you, is there any reason that you know of why you could not sit as a fair, impartial juror?

A. No, sir, I know of no reason.

Mr. Talley: I challenge for cause, in view of the statement your Honor has just heard.

The Court: Try the challenge.

ANDREW A. MERRICK, a takerman, was then sworn and examined on the challenge.

[fol. 604] By Mr. Talley:

Q. Mr. Merrick, if I repeated to you the questions which I have just asked you, particularly those dealing with your reading the newspaper accounts relating in some manner or other to this case, now that you have been sworn, if I repeated those questions to you would your answers be the same?

A. Yes, sir, the same.

Mr. Talley: I press the challenge.

The Court: Any questions by any other counsel?

By Mr. Rosenthal:

Q. You have already admitted to Judge Talley that you have an impression which is unfavorable to the defendants.

A. Yes, sir.

Q. So that quality of evidence would either have to be produced by The People or the defendants would be different than would otherwise be the case if you did not have that bad impression?

A. Yes.

By Mr. Turkus:

Q. I think you told counsel for the defense that you had prior jury service sometime in 1928?

A. Yes, sir.

Q. Of course, that is a long time ago, but do you remember the Judge charged you on the presumption of innocence?

A. Yes, sir.

Q. According to our system of law the defendants are presumed to be innocent?

A. Yes, sir.

Q. And that presumption attaches itself and it remains [fol. 605] with them until the prosecutor overcomes it by proof establishing guilt beyond a reasonable doubt?

A. Yes, sir.

Q. That is a sensible rule, isn't it?

A. Yes, sir.

Q. For a man to come into court with the presumption of innocence?

A. Yes, sir.

Q. You do not find any fault with that?

A. No, sir.

Q. It is a sensible rule that the prosecutor must establish guilt beyond a reasonable doubt on evidence he brings into court?

A. Yes, sir.

Q. Now, it is sensible also that the prosecutor must establish guilt upon the evidence and not upon articles that may appear in the press?

A. Yes, sir.

Q. Because that would be substituting a newspaper account for the collective wisdom of the jury?

Mr. Talley: I object to discussion or argumentation about these matters.

The Court: Objection overruled.

Mr. Talley: Exception.

The Court: What is somewhat puzzling is this: The talesman says he has an impression. He says that impression cannot be removed without evidence being supplied. We have not as yet gotten to the point as to whether or not he could put aside that—not to leave it out, but to put it aside and consider the evidence in the case and decide the case on the evidence.

[fol. 606] Mr. Turkus: Mr. Rosenthal's question was a question as to the quality of proof, so I have to take into consideration the proof.

The Court: But that is upon the assumption that he would not be required to put aside the impression.

By Mr. Turkus:

Q. Now that we have had a preliminary discussion, is the impression one that you have gathered from reading articles in the past which pertain to a single defendant or more?

A. Reading articles in the press pertaining to more than one.

Q. Is your state of mind such that you can give these men on trial a fair trial by laying aside the impression you formed from reading the newspaper?

A. I could.

Q. Not only lay it aside, but will you deliberate their guilt or innocence upon the evidence you hear in court?

A. Yes, sir.

Q. Completely devoid of any articles in the newspapers which you have read?

A. Yes, sir.

Q. There is only one kind of proof the law requires a prosecutor to give, and that is proof satisfactory to the jury beyond a reasonable doubt of the guilt, and that cannot be increased or lessened. Do you find any fault with that?

A. No, sir.

Q. So that degree of proof or quality of proof always remains?

A. Yes, sir.

[fol. 607] Q. The law is, and you will be charged by the Court, that the defendants have no burden in the case; they can sit mute, and their failure to produce evidence or to take the stand cannot be used against them, nor can any unfavorable inference be drawn, so there is never an obligation on the part of a defendant to produce any evidence at all. Do you find any fault with that proposition?

A. No, sir.

Q. If you are so instructed by the Court, will you conscientiously endeavor to follow the instructions of law and apply the same to the facts in this case?

A. Yes, sir.

Q. So as you sit here as a juror now, your verdict will be Guilty if and only if the prosecutor establishes to your satisfaction beyond a reasonable doubt that these three men are guilty of murder in the first degree, the murder of Joseph Rosen?

A. Yes, sir.

By Mr. Talley:

Q. You told the District Attorney that you thought you could lay aside this unfavorable impression——

Mr. Turkus: I object, he said he would.

The Court: Objection overruled.

A. Yes, sir.

Q. You told me before that, before you could lay that unfavorable impression aside or put it aside, you would require some evidence.

A. Yes, sir.

[fol. 608] Q. And that you would expect evidence to come from the defendants in some manner or other, wouldn't you?

A. I think so, yes, sir.

By Mr. Barshay:

Q. If the defendants did not offer, either through themselves or through witnesses, any evidence to dissipate the impression you have at this moment, that impression would still remain because of their failure to give such evidence to you?

A. You mean if there was no evidence introduced in their favor?

Q. Yes.

A. I would have to take that into consideration.

Q. And that would weigh?

A. Yes, sir, that would influence me.

Q. Of course it would, to the detriment of all the defendants?

A. I think so.

Q. That would preclude from carrying out your oath as a juror, to give these defendants a fair trial, isn't that so?

A. I do not say I would not give them a fair trial, but it would influence me to a certain extent.

Q. That is your honest opinion?

A. Yes, sir.

Mr. Barshay: I press the challenge.

Mr. Cuff: We all join in the challenge.

By Mr. Rosenthal:

Q. In addition to the fact you have an unfavorable impression gained from newspaper articles, you have great [fol. 609] friendship for the First Assistant District Attorney (Mr. Hughes)?

A. Yes, sir.

Q. Now, assuming that through the trial, as he would have a perfect right to do, he came into this court-room and either passively assisted in the trial or sat here where he would be noticeable, that fact together with the unfavorable impression you have gained would have some weight in your determination of this case, wouldn't it?

A. That is a fair thing for you to ask. I don't think so. The fact of his coming in the room would not influence me.

Q. But you say you do not think so. That implies you are in doubt.

A. It might have a slight effect, his presence.

Q. In other words, your feeling is that you have a doubt in your mind now in addition to the other one expressed as to your impression, as to whether that would not influence you in determining the guilt or innocence of the defendant?

A. Yes, sir.

Q. That is in addition to what you have stated to Mr. Barshay in regard to an unfavorable impression you formed?

A. Yes, sir.

Mr. Rosenthal: I press the challenge.

By Mr. Turkus:

Q. I think you told me you could lay aside the impression you gathered from reading the newspaper articles.

A. Yes, sir.

Q. I think you told Judge Talley when he spoke to you [fol. 610] about Mr. Hughes that you did not want Mr. Hughes to get ahead that way.

A. Yes, sir.

Q. Do you think it would have any effect on your determination of the guilt or innocence of the three men on the murder charge, whether Mr. Hughes walked into the court-room and sat at the counsel table or did anything in your presence?

A. I don't think that would have any influence on my verdict, if I was a juror; his presence would not count.

Q. In other words, if accepted, will you discharge your oath of office and try the case on the merits, regardless of any opinion you might have had in the past or any association you have had with one of the prosecutors?

A. I would go by the evidence.

Q. I think you told me you find no fault with the proposition of law and that you would accept the instruction from Judge Taylor that the defendant has no burden at all; that he need not offer any evidence in his behalf.

A. Yes, sir.

Q. Understanding that, would you nevertheless require him, is your state of mind such that despite the law that he need give no evidence, you would still require that he give evidence?

A. I would want to listen to some evidence before I could make up my mind.

Q. Of course you must hear the evidence of the prosecution.

A. Yes, sir.

Q. Bearing in mind the defendant does not have to give [fol. 611] you any evidence if he does not want to, and that the Judge will so instruct you, that that is the law, is your mind such that you nevertheless in this case want the defendant to give you evidence?

A. If we are instructed it is not necessary and it is not the law in the case, I would go by the orders of the Judge.

Q. Your state of mind is such you can follow the instructions of the Judge?

A. Yes, sir.

Q. And if he tells you the defendant need offer no evidence, you will not expect any?

A. No, sir.

By Mr. Barshay:

Q. As you sat here you heard before the question put to you by Mr. Turkus many times, representing that no defendant need offer proof nor explain an accusation against him?

A. I may have heard it, but I am not positive; I heard so many things.

Q. You heard so many things it may have confused you?

A. Yes, sir.

Q. And even as you sat in the chair where you are now, one of the first questions put to you by Mr. Turkus was about the presumption of innocence and the burden of proof, that the defendant need not take the stand.

A. Yes, sir.

Q. And after you answered that you heard of and you agreed with the enforcement of the Penal Law, which gives the defendants those rights, you still said that because of what you read you had formed an impression unfavorable [fol. 612] to the defendants which would have to be dissipated only when and if the defendants or someone in their behalf would offer evidence?

A. That is true, yes, sir.

Q. So, in spite the fact you knew what the law is, having heard it both from the Court and the lawyer, you still, only a few minutes ago, told Judge Talley, Mr. Rosenthal, and myself, that someone would have to furnish, on behalf of the defendants, evidence to remove the impression you gained unfavorable to them.

A. I told you that? I must have, if you say so.

Q. That was your honest answer?

A. Yes, sir.

Q. To be frank, that even at this moment there was an influence in your mind so unfavorable to these defendants that unless someone came forth from their side and offered evidence to dissipate your impression, you still would have a feeling in your mind against them; isn't that so?

A. It is still there.

Q. Even after you answered Mr. Turkus?

A. Yes, sir.

Q. That impression unfavorable to them is still in your mind?

A. It is a hard thing to remove.

Mr. Barshay: I press our challenge.

The Court: The question seems to be not whether he can remove it, but whether he can disregard it or lay it aside.

By Mr. Barshay:

Q. It will be difficult for you to lay aside an impression unless an affirmative proof on their behalf comes forth [fol. 613] from the witness stand?

A. Yes, sir.

Q. And their failure to do so would influence your judgment to their detriment?

A. Yes, sir.

Mr. Barshay: We press the challenge.

The Court: Challenge sustained.

MAX GOULD, No. 2817, was then examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. The trestle board lists your address as 1st Street, Brooklyn?

A. Yes, sir.

Q. Is that in the Flatbush district?

A. Midwood.

Q. Is that between Flatbush and Sheepshead Bay?

A. No, sir, that is one block the other side of Coney Island Avenue between J and K.

Q. You are listed as a manufacturer.

A. I have been in the manufacturing business up until last June.

Q. What did you manufacture?

A. Negligees.

Q. Where was your office?

A. 1350 Broadway, 35th Street.

Q. That is pretty much in the heart of the garment district?

A. Directly across the street.

Q. Does the name Lepke mean anything to you?

A. Not a thing.

Q. What is your business now?

A. I am a designer now.

Q. Where are you employed?

A. I am not employed; I am for myself.

[fol. 614] Q. Where do you conduct your business?

A. 107 Madison Avenue.

Q. What street is that near?

A. 33rd Street and Madison.

Q. You were manufacturing negligees for how many years?

A. Seven or eight years.

Q. You must have many contacts in the clothing and garment district in Manhattan.

A. Absolutely none.

Q. Your place of business has for years been in close proximity to that area.

A. In the garment center, that is in the ladies' garment center.

Q. In all the years you have been there the name I mentioned means nothing to you?

A. Absolutely nothing, never heard of it.

Q. When you were manufacturing, did you have any business with unions?

A. I did not; I had a partner; I had charge of the sales and designing. I had nothing to do with the manufacturing end. We had our factory in the Bronx, but I never went up there.

Q. Are you in business with this partner personally?

A. No, sir.

Q. You discuss business affairs with your partner, don't you?

A. Not the manufacturing end of it; I had nothing to do with that; that was his end of the business.

Q. Didn't you and your partner discuss business problems that arose in the manufacturing part of the business?

A. Yes, sir.

[fol. 615] Q. And in the distribution of the product?

A. I took care of the distribution and costs; I was only interested in the cost of production.

Q. You know many people in the garment district?

A. Only in my line, the negligee business.

- Q. How about people in ladies' clothing?

A. I don't know a soul.

Q. Did your business bring you in contact or connection with people in Brownsville and East New York?

A. No, sir.

Q. How long have you lived in the Midwood section?

A. Four years.

Q. And prior to that?

A. 2930 West 36th Street, Sea Gate.

Q. Did you know Mr. William Kleinman?

A. I did not.

Q. Do you know people in the Sea Gate area in Brooklyn, inside of the Gate?

A. I know very few.

Q. How many years did you live in that section described as the Gate?

A. About twelve years.

Q. Did you have any contact directly or indirectly with anybody in the Brownsville or East New York area of Brooklyn by way of business, social, or any other way?

A. No, sir.

By the Court:

Q. Is that near Mermaid Avenue?

A. Between Railroad and Mermaid, a bid apartment house; I lived there about ten years in the apartment; I had business out there; I had to live there; I had connections in the bath-house business, Turkish bath; I was [fol. 616] interested.

Q. What bath was that?

A. The old Stillwell Baths.

Q. On Stillwell Avenue near Surf?

A. Yes.

Q. Didn't Jack Harvey have charge of that afterwards?

A. That was after it went into bankruptcy, it became the Harvey Baths.

Q. It had about two thousand customers?

A. We handled ten thousand customers, at least.

Q. About two thousand at a time?

A. Yes, sir.

Q. In fact, you had to employ a lawyer on a salary to defend damage suits through people slipping on the floor?

A. We had a big business, yes, sir; there was an investment in there of \$800,000.

Q. It is closed now?

A. Yes, sir.

Q. It did not pay?

A. It paid, but we did not have the "architect." There were two different people at each end.

Q. What was the name of the first man that had it?

A. Sam Richman and Dr. Travis of New York, a cousin of mine and myself.

By Mr. Turkus:

Q. In those years you have been in the ladies' garment district did you ever hear the name of Gurrah?

A. Never.

The Court: I asked you about the baths not out of curiosity, but because in handling about ten thousand people a week, I take it most of your trade is local trade?

The Talesman: No, sir, we had trade from New York and [fol. 617] all over; they used to come there for hot Turkish baths.

By the Court:

Q. Did that include people in the garment business and people whose families were engaged in the garment business?

A. I never went into that; I had nothing to do with them.

Q. People who lived to the east of you on Mermaid Avenue?

A. I don't know how many of them came to the baths; I never paid any particular attention to determine that.

Q. The question is as to the character of the customers from what you found out.

A. We had some very fine customers; that we could tell by the tips.

Q. That does not mean anything. You had a pretty good Coney Island trade?

A. We had them from New Haven, Connecticut, and all over; we had people come from Saratoga and all over.

By Mr. Turkus:

Q. Did you ever hear the name of Curly Holtz?

A. No, sir.

Q. Or Terry Burns or Abie Slabo?

A. No, sir.

By the Court:

Q. A lot of people slept there over night?

A. Yes.

Q. A good, big night trade?

A. We had accommodations for about three hundred.

Q. Did they sleep in dormitories?

A. Dormitories, private rooms.

Q. Did people live there?

A. No, sir, just over night.

By Mr. Turkus:

Q. Did you manufacture anything other than ladies' [fol. 618] negligees at any time?

A. That is all.

Q. Did you belong to a union?

A. I did not have anything to do with that. Union No. 62 in our local, but I did not have anything to do with it, and I never mingled with them.

Q. In the business you are now in, as a designer, you are right in the area of the garment manufacturing center; that is, the ladies' part?

A. There are certain concerns, they knew me, and then they are starting a line they get in touch with me at my home and tell me they are ready for their fall line, and I make up, design garments, and make them patterns; that is all I do. They pay me for what I do.

Q. That is the ladies' garments?

A. Yes, sir.

Q. And of course these contacts bring you in the area, in that area largely?

A. On Broadway, around 35th Street.

Q. That is the heart of the clothing district?

A. That is the negligee, I mean the ladies' clothing.

By the Court:

Q. Where did you take a course in designing?

A. I guess it was born in me; I have been doing it for twenty years.

Q. You know they have courses in that; you never went to any school?

A. No, sir, but I guess I am inclined to be—mechanically inclined.

By Mr. Turkus:

Q. Have you read any newspaper accounts of Judge O'Dwyer's investigation?

A. No, sir.

Q. Nothing at all?

A. Never.

[fol. 619] Q. You never read the name of Lepke in any newspaper?

A. When I received the summons, that is, the subpoena, I did not know what the subpoena was, and I came up here,

and I looked at the board here, and I saw three or four names; that was the first time; then it dawned on me and I used to see in the *Times* once in a while Lepke, but I never paid attention to it.

Q. You have been around the Broadway and 34th Street area for how many years?

A. Twenty-five years.

Q. And the first time you saw the name of Lepke, to your recollection, *what* when you saw it on the board outside of the court-house and once or twice in the *Times*?

A. I saw it in the *Times*, but I never read those articles.

Q. Did you ever see the name Gurrah anywhere?

A. No, sir.

Q. Did you ever hear any discussion about those names up around Broadway and 34th Street or in that area?

A. No, sir.

Q. Were you up there personally while you were awaiting jury service?

A. I have not been in New York for two weeks.

Q. Two weeks ago, when you had the notice in your pocket, did anybody mention the name of Lepke?

A. I don't associate with those people.

By the Court:

Q. Just look at these defendants carefully. From having contact with bathers and handling so many people a week for so many years, see if you recognize any of them as customers.

A. I don't know anybody in the court-room.

[fol. 620] Q. Sure?

A. I am positive.

By Mr. Turkus:

Q. During the ten years you have been in that district did you ever hear the name of Murray Weinstein?

A. In which district?

Q. Up in this district where you were manufacturing ladies' negligees, did you ever hear the name of Murray Weinstein, manager of the Clothing Cutters Union of the Amalgamated?

A. No, sir.

Q. Did you ever hear the name of Samuel Katz, a business agent?

A. No, sir.

Q. Did you ever hear the name of Bruno Belia?

A. No, sir.

Q. Or Salvatore Marazzano?

A. No, sir.

Q. When you were in the business of manufacturing, you say your partner attended to the actual manufacturing of the article into the finished product, and you had charge of the distribution?

A. Yes, sir.

Q. Did you deliver with truckers?

A. I did not; he took care of that; I was at 1350 Broadway, where we had our display. I took care of the styles and the buying of piece goods. I could not tell you one employee who worked for us, and we had 125 girls. I could not tell you any of them; I never went up to the factory.

Q. As I understood your relationship, you were a partner in this manufacture?

A. Absolutely.

[fol. 621] Q. And even though your partner handled one specific end of the business, didn't you ever talk to him about that part of the business?

A. About the figures, the cost of production; that is all, how the factory was going, how many were working.

Q. Was there any time when there was any difficulty with the distribution, with the trucking end of the product?

A. I never heard of it.

Q. Does the name Philip Orlofsky mean anything to you?

A. No, sir.

Q. Do you know any official in the Clothing Drivers & Helpers Union, Local No. 240?

A. No, sir.

Q. Or any Teamsters Union officials?

A. No, sir.

Q. Does the name of Max Silverman mean anything to you?

A. No, sir.

Q. Do you know any people in the Gate named Silverman?

A. No, sir, but I have heard there was a fellow in the Gate there that was in the trucking business, but I did not know him.

Q. Where did you hear that from?

A. I heard people talking.

Q. People in the neighborhood?

A. Yes, sir, they said something about a fellow living in the Gate that was connected with him, but I do not know where he lived even.

Q. Did you hear the name of Silverman in court today?

A. I think I heard the name.

Q. Did you hear any other names mentioned with Silverman?

[fol. 622] A. No, sir.

Q. Does the name Wolfie Goldis mean anything to you?

A. No, sir.

Q. Or William Alberts, a bondsman?

A. No, sir.

Q. Did you ever hear the name of Bellanca and Tosca mentioned?

A. No, sir.

Q. Do you know anybody named Buchalter?

A. No, sir.

Q. Did you meet any such person in the clothing district?

A. No, sir.

Q. Do you know Philip Kowas?

A. No, sir.

Q. Did you ever hear of a man named Joe Rosen in his lifetime?

A. No, sir.

Q. At the time when there were certain difficulties in the garment district, didn't you ever hear any discussion?

Mr. Talley: I object to any further questions along that line from this talesman. He has repeatedly said he had no knowledge of any of these persons. Why press it? It cannot have any bearing on whether the man makes a competent juror or does not.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir, I did not.

Q. As you sit in the jury box have you any bias or prejudice against the defendants on trial?

A. No, sir.

Q. You never heard the name of Weiss, Capone, or [fol. 623] Buchalter before, to your recollection?

A. Never.

Q. Do you know any of the defense lawyers in the case?

A. No, sir.

Q. You have heard the names read off to the other jurors. Do you know any person attached to the law offices of any of counsel for the defendants in this case?

A. No, sir.

Q. Did you, at home or any place else, partake in any discussion in connection with the Rosen case?

A. Never.

Q. Or in any investigation conducted by Judge O'Dwyer, the prosecutor of this county?

A. Never.

Q. Was there ever any discussion had in your presence and hearing regarding any investigation conducted by Judge O'Dwyer?

A. No, sir.

Q. Or in connection with these defendants by Thomas E. Dewey, in connection with the garment district?

A. No, sir.

Q. Or the clothing district?

A. No, sir.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. No, sir.

Q. In inquiring of the other talesmen, Judge Talley asked them whether or not they had any political connections or whether or not they were interested in Judge O'Dwyer's campaign for Mayor. I want to ask you, were you interested in Judge Talley's candidacy for the Democratic nomination for Mayor?

Mr. Talley: I object; that is not material.

[fol. 624] The Court: He can answer it. Objection overruled.

Mr. Talley: Exception.

Q. I want to know whether you were helping out Judge Talley trying to become the Democratic nominee for Mayor before O'Dwyer got the nomination.

A. I don't know him.

Q. You never heard of anybody in the case, either by way of the lawyers for the defense or anybody?

A. I will tell you, if Judge Talley was on the ticket I might have voted for him because I usually vote the straight Democratic ticket.

Q. In other words, as a juror, you are here to try a murder indictment?

A. Yes, sir.

Q. And to try out the issue whether these men are guilty of murder in the first degree, the murder of Joseph Rosen?

A. Yes, sir.

Q. Is there anything concerning which I failed to make inquiry that might affect your qualifications to sit as a juror?

A. No, sir.

Q. Would you be embarrassed in any way by service in this case?

A. No, sir.

By the Court:

Q. Wasn't Abie Reles a customer in Stillwell's Baths?

A. What?

Q. Did you ever hear that name before?

A. No, sir.

By Mr. Turkus:

Q. You never heard the name of Reles?

A. No, sir.

[fol. 625] Q. Did you ever hear the name of Pittsburgh Phil Strauss?

A. No, sir.

Q. Or Harry (Happy) Maione?

A. No, sir.

Q. Or Frank (The Dasher) Abbando?

A. No, sir.

Q. Or Martin (Bugsy) Goldstein?

A. No, sir.

By the Court:

Q. Never heard of those names before?

A. I never did.

Q. Do you read any papers?

A. I certainly do. I read the *Times* and the *Post*.

Q. You have belonged to no Democratic clubs?

A. No, sir.

Q. You are in the 16th?

A. I used to be in the 16th; I am in the 4th now.

Q. Where do you live?

A. 1047 East 10th Street.

Q. Is that the 4th Assembly District?

A. Isn't it? I think it is. I don't know what it is; I know I was in the 16th.

Q. You are many miles away from that.

By Mr. Turkus:

Q. Did you say you belonged to a political club?

A. No, sir.

Q. None of the names I have mentioned to you have any familiarity at all?

A. No, sir.

Q. Did you never read about Reles?

A. No, sir.

Q. Or Harry Strauss, alias Pittsburgh Phil?

A. I never read about those names, as I tried to explain to you; I have seen them in the headlines, but I did not read it. If it had something to do with manufacturing, maybe I would read it.

[fol. 626] Q. Have you any opinion or impression now from anything you have read or heard with respect to this case?

A. I don't know anything about the case. I only read an article in the *New York Times* when we were dismissed for the month, and there was a little piece in the paper; it said something about a postponement until September 15th. That is as far as I know about this case. I never read this case before in my life.

Q. In regard to the people who patronize this Turkish bath, where people slept over night, did you ever see any individuals who were closely identified with Brownsville or East New York at that institution you were connected with?

A. We had a day manager and a night manager. I was a part owner. I don't know who patronized the baths. I was only interested in the deal.

Q. Was that the kind of a bath where they had "cups" they put on?

A. We had—that is in the Turkish department.

Q. While you were in this Turkish bath the only interest you had was in the deal?

A. Yes, sir.

Q. While you were in the district on upper Madison Avenue, a section approximately at 33rd, 34th, and 35th Street, you had nothing to do except with designing clothes?

A. Designing, selling, and taking care of my business; I had nothing to do with the manufacture; the minute I made a garment I put a price on it and that went to the production department, and they took care of the rest. That was all my headache. My headache was through.

[fol. 627] Q. Do you know Judge O'Dwyer, the District Attorney?

A. I just know him through campaigning; I have seen him.

Q. Have you been introduced to him?

A. Maybe I have.

Q. Do you feel favorably inclined toward him?

A. No, sir, not necessarily.

Q. Have you any bias or prejudice against him?

A. Absolutely not.

Q. Do you know any member of the District Attorney's staff?

A. No, sir.

Q. Do you know any member of District Attorney Geoghan's staff?

A. I do not, and I think I voted for Geoghan; that is all I know about it.

Q. If accepted, will you take the law implicitly from the Court?

A. Absolutely.

Q. As you sit in the jury box, is your frame of mind such that the defendant must produce evidence in his behalf?

A. They should bring in evidence. I don't know; I think you should bring in evidence.

Q. I am asking you if you would expect the defendants to bring in evidence.

A. Not necessarily.

Q. If the time came when they did not bring in any evidence, would you be prejudiced against them?

A. No, I don't get the meaning of it.

Q. Supposing the prosecutor brings in a lot of witnesses, produces a lot of testimony and evidence against the defendants, would you expect the defendants to come in with some [fol. 628] evidence?

Mr. Climenko: I object to the form of the question.

The Court: Objection sustained. It is a question of law.

By the Court:

Q. Where did you meet Judge O'Dwyer during the campaign?

A. When he ran for office he used to be in the district; I think he was at the Half Moon Hotel once.

Q. How long ago was that?

A. That is maybe four years ago.

Q. That is when he ran for judge of this court?

A. I don't quite remember what he ran for.

Q. You attended a political meeting?

A. Yes, sir, Kenny Sutherland.

Q. You know Sutherland?

A. I know him as a leader.

Q. You know him socially?

A. No, sir, but I have met him; he only lives one block from my house.

By Mr. Turkus:

Q. Have you any prejudice against the testimony of an expert?

A. No, sir.

Q. Be it ballistic, handwriting, or otherwise?

A. No, sir.

Q. Do you have any prejudice against a case where a prosecutor breaks a case from the inside and offers testimony of one of the co-conspirators in the matter against the others?

Mr. Talley: That is objected to.

The Court: Objection overruled.

[fol. 629] Mr. Talley: Exception.

A. No, sir.

Q. Who were the co-owners at Silver's Baths?

A. Dr. Travers, Sam Richmond, and another Travers from Springfield.

Q. Were you ever a witness in any litigation?

A. No, sir.

Q. In any lawsuit?

A. No, sir. Well, I had a civil case about the delivery of merchandise; it was settled out of court.

Q. Were you ever a complainant or a witness in any criminal prosecution?

A. No, sir.

Q. Has any member of your family ever been the victim of any crime?

A. No, sir.

Q. Have you been in business under any name other than your own?

A. Jean-Dell, robes.

Q. What kind of robes?

A. They are negligees and robes.

Q. Any other name?

A. No, sir.

Q. So the only names you have conducted——

A. Well, myself, I have been in May's sportswear.

Q. What kind of sportswear?

A. Negligees; we called it sportswear, but it was negligees.

By the Court:

Q. Was one of these Travis's at one time around Coney Island?

A. No, sir.

Q. Did he live toward Bensonhurst?

A. No, sir; Dr. Travers lived on Riverside Drive at 104th Street.

Q. Are you a member of the Coney Island Board of Trade?

[fol. 630] A. No, sir.

By Mr. Turkus:

Q. Are you in sympathy with the enforcement of the Penal Law?

A. Yes, sir.

Q. Do you belong to any law enforcement societies?

A. No, sir.

Q. Have you listened to any discussions on the subject of crime given by any prosecutor or anyone else?

A. No, sir.

Q. Do you know a lawyer named Price, David Price?

A. No, sir.

Q. When you were doing business in the Coney Island area, did you belong to the Coney Island Chamber of Commerce?

A. No, sir.

Q. In the years you have been in the clothing district, particularly in this negligee business, did you belong to any chambers of commerce there?

A. No, sir.

Q. Or any manufacturers' association?

A. No, sir.

Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Do you know Dr. Michaelson, in Sea Gate?

A. I don't know him; I heard of a Dr. Michaelson; I do not know him.

Q. Is there any reluctance on your part to proceed as a juror in this case?

A. No, sir.

Q. Have you heretofore had any jury service?

A. No, sir.

Q. In no civil case?

A. No, sir.

Q. Is this the first time your name has been drawn on this [fol. 631] special panel for this service?

A. Any service.

Q. Have you heretofore been interrogated as to your qualifications for service in a court of justice?

A. I have never been on any jury service.

Q. Since your notification was given to you that you were a prospective juror, did anybody speak to you about the defendants or any part of the case, of the District Attorney's investigation?

A. No, sir.

Q. Did anyone speak to you about having to make arrangements in the event you were selected as a juror?

A. Nobody spoke to me.

Q. You have had no discussion with anyone either with reference to your service on the jury?

A. No, sir.

Q. In the event the trial is protracted, I mean lengthy, would you be subject to any business inconvenience?

A. Not until next January.

Q. So you can go right along up until then?

A. I was inconvenienced at the time I was called, I had to go on a trip, but it was postponed; it gave me ample time for business.

Q. Do you have any prejudice against an accomplice simply because of being an accomplice, to the extent that you would reject his testimony?

A. No, sir.

Q. Is there anything concerning which I have not asked you which would affect your qualifications to sit as a juror?

A. No, sir, not any.

[fol. 632] By Mr. Climenko:

Q. Other than the article in the *Times* did you read about this case at all?

A. Never.

Q. Have you read about the defendant Buchalter at any time other than that article?

A. Never.

Q. Do you have any opinion, as you sit here now, about the innocence or guilt of any of these defendants?

A. Well, from what I know they are innocent; I don't know anything about them.

Q. You understand—assuming you were instructed by the Court that any defendant charged with the commission of a crime is presumed to be innocent; would you have any quarrel with that concept of the law?

A. No, sir.

Q. Assuming you were instructed by the Court—I am referring to the matter Mr. Turkus discussed with you—that no defendant is under obligation to elicit—I mean bring forward, any evidence whatever in a criminal case, would you have any difficulty in following that instruction?

A. Not from the Court, no, sir.

Q. Assuming by the time the trial closes a particular defendant does not attempt to adduce any proof, would you be prejudiced against that defendant by reason of that?

A. No, sir.

Q. In other words, you would have no difficulty in following the instructions of the Court as to the law on that subject?

A. Absolutely.

Q. Are you acquainted with any member of the District [fol. 633] Attorney's staff?

A. No, sir.

Q. Are you acquainted with any member of the Police Force?

A. No, sir.

Q. You have not at any time discussed this case with any of your friends?

A. Never.

Q. You hold no opinion on the case as you sit here now?

A. I don't know anything about the case outside of a little article I read that somebody was murdered on account of being a witness for Dewey; it was a little, small clipping. That was the second day I was here, when they asked for a postponement. I saw it in the *New York Times* about that day. I think that only mentioned Buchalter; I don't think it mentioned the postponement.

Q. That was the article you read about a month ago?

A. Yes, sir.

Q. From reading that article you gained no impression unfavorable to any defendant?

A. Oh, no.

Q. You have said that you were a member of a political party.

A. I am not a member.

Q. You suggested you had voted regularly for a political party?

A. As a rule I vote one hundred per cent Democratic.

Q. You regularly vote for a particular party, whichever it may be?

A. Sometimes I split a ticket.

Q. You know that we are about to have an election in the City of New York?

A. Yes, sir.

[fol. 634] Q. You would not confuse that election with the trial of the case in court here?

A. Absolutely not.

Q. By that I mean you would not yourself be confused by the fact that the election is impending with any of the issues?

A. No, sir, I am going to vote for O'Dwyer anyhow; I don't care how the election goes.

Q. The fact that you are going to vote for Judge O'Dwyer is a circumstance which would not affect the discharge of your duty as a juror?

A. No, sir.

Q. One thing has nothing to do with the other?

A. No, sir.

Q. The fact that O'Dwyer happens to be District Attorney and that the Oistrict Attorney happens to be running for Mayor would not affect your impartial consideration of the evidence in the case?

A. No, sir, not if it was my own brother.

Mr. Climenko: No further questions by the defense.

Mr. Turkus: Challenge peremptorily.

HENRY R. LATHROP, No. 2685, residing at 430 Clinton Avenue, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. According to the trestle board you live in Clinton Avenue?

A. Yes, sir.

Q. Is that in the Brocklyn Heights section?

A. No, sir, the Hill section.

[fol. 635] Q. Have you lived there for a number of years?

A. About twenty-five years.

Q. The trestle board lists your occupation as that of sales promotion.

A. Yes, sir, sales and advertising.

Q. What is the product?

A. There isn't any product; it is just an advertising promoting.

Q. Advertising campaigns and promotion work?

A. Yes, sir.

Q. Did you ever have any specific connection with people in the garment or the clothing business?

A. No, sir, my work is in the grocery field.

Q. I take it we can go along with the assumption that you have had no contact, directly or indirectly, with anyone in the garment or clothing district, or clothing truckers' industry?

A. That is right.

Q. Have you had any connection, in any wise, with any persons or firms in the Brownsville or East New York area?

A. No, sir.

Q. Since your name appeared on the panel, specifically since you received your slip, did anybody speak to you about the case?

A. Not about the merits of the case. Members of my family mentioned it.

Q. About making arrangements if you were selected?

A. Yes, sir.

Q. Are you in sympathy with the enforcement of the Penal Law?

A. Yes, sir.

[fol. 636] Q. I take it I need not inquire as to any possible connection with any official of the Amalgamated Clothing Workers of America, or with any Teamsters Union, or any Truckers?

A. I have had no such connection.

Q. The names I stated to some of the other jurors, have they any significance to you?

A. None whatever.

Q. The defendants are represented by nine lawyers, Mr. Barshay, a former Assistant District Attorney, Mr. Cuff, Mr. Wegman; do you know any of those lawyers?

A. No, sir.

Q. Or anyone attached to their offices?

A. Not to my knowledge.

Q. The defendant Weiss is represented by Judge Talley and former Assistant District Attorney Cuff and former Assistant United States Attorney Kriendler; do you know any of those people?

A. No, sir.

Q. With respect to Capone, who is represented by Rosenthal, Fischbein, and Rosenberg, do you know any of those?

A. I do not know any of them.

Q. Do you know Judge O'Dwyer or any member of his staff?

A. I do not.

Q. Do you know Mr. Geoghan or any member of his staff?

A. No, sir.

Q. Do you find any fault with the prosecutor of the county or with the prosecution wherein, in order to break a case, a case is broken from the inside, to use accomplice [fol. 637] testimony, and that is availed of by the prosecution to testify against the others in the commission of a crime?

Mr. Talley: That is objected to.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. Do you have any bias against the prosecutor of a county, or against the prosecution of a case wherein the case is broken from the inside and testimony of co-participants in the crime is used against others on the trial?

A. No, sir.

Mr. Talley: I make the same objection as to that.

The Court: The same ruling.

Mr. Talley: Exception.

Q. Is your state of mind such you believe that sometimes, even men of bad character or reputation and bad past habits may tell the truth?

A. Yes, sir.

Q. That will be your job, to find out if the accomplice is telling the truth and to find out if there is other evidence in the case tending to connect the defendants with the commission of the murder?

A. Yes, sir.

Q. If accepted in the case, will you listen to common sense and reasonable discussion of the other jurors?

A. I would.

Q. I take it that in your every-day business life you have occasion to discuss business problems with others in an executive way?

A. Yes, sir.

Q. And to iron out problems and disputes amicably, with [fol. 638] common sense and reason?

A. Yes, sir.

Q. You will do that, if accepted, listen to reason and arguments of other jurors?

A. Yes, sir.

Q. Have you any conscientious scruples or otherwise against capital punishment?

A. None.

Q. If accepted, will you endeavor conscientiously to arrive at a just and a true verdict?

A. Yes, sir.

Q. And if at the end of all the evidence in the case, after you have heard the lawyers for the defense tell you how they view the evidence, and you listen to the prosecution

tell you how it views the evidence, and then you have the learned Court charge you on the law, and discuss the case with the other jurors, if your conscience satisfies you beyond a reasonable doubt that there are three guilty men here, three guilty of murder in the first degree, Weiss, Capone, and Buchalter, guilty of the murder of Joseph Rosen, would you hesitate to say so?

A. I would not.

Q. Would there be any embarrassment or reluctance on your part in pronouncing such a verdict?

A. None whatever.

By Mr. Barshay:

Q. Have you ever been on a jury before?

A. Not in a criminal case. I have served in civil cases several times.

Q. Recently?

A. I think the last time was two or three years ago.

By the Court:

[fol. 639] Q. Isn't that the block that former President Ingersoll lived on?

A. He lived at Grand and Lafayette, a block difference.

By Mr. Barshay:

Q. Have you ever been a Grand Juror?

A. I was on a Federal Grand Jury in 1918.

Q. Have you ever been called to serve as a special juror, without serving, just called?

A. No, sir, this is the first time.

Q. So your only experience in the administration of criminal law dates back to February, 1919, or sometime in 1918?

A. Yes, sir.

By the Court:

Q. Are you in an apartment house there?

A. No, sir.

Q. Didn't Herman Ketz live on that block?

A. I think he did.

By Mr. Barshay:

Q. Do you recall when you were a Federal Grand Juror Henry Walsh, now chief of the Appeal Bureau in Judge O'Dwyer's office, was the Assistant in charge of the Grand Jury?

A. No, sir, I do not, it has gone almost completely out of my mind. I could not say who the man was. I do not remember at all.

Q. You do not know Henry Walsh?

A. I remember the District Attorney—the Federal Attorney who came in before the jury. I remember him in only a general way. I don't remember the name; I never seen him since.

Q. Do you know Frederick Kopf, an Assistant at that time?

A. No, sir.

[fol. 640] Q. Do you know any police officials?

A. No, sir.

Q. Do you know anyone at all that has even been associated with the prosecutor's office in Brooklyn, in this or the last administration?

A. No, sir; of course I knew Judge Cropsey at one time; he was Police Commissioner years ago.

Q. Did you know him intimately?

A. Fairly well.

Q. Did you ever discuss criminal cases with Judge Cropsey when he was Police Commissioner?

A. No, sir, never.

Q. You never made the rounds of precincts with him?

A. Never.

Q. Have you ever read about this case?

A. Only after the first session here, 4th or 5th of August, in the *Herald-Tribune* and *Sun*, to get an idea of what it was all about. I did not know when I came here what it was all about; then I saw the names of the defendants, and after that so many excuses were granted.

Q. Have you ever read about any of the defendants, irrespective of this case?

A. I don't remember having done so; I do not recall it. There is a familiarity about the name Buchalter, but I don't know—I don't remember anything besides that.

Q. As a result of what you read in the *Sun* or the *Tribune* or any other periodical, did you form any impression as to the truth or accuracy of the contents of those articles?

A. Well, there was no opinion expressed in those articles; they were just short squips, giving the facts.

Q. Did you form an impression as to the truth of those facts?

A. Why, yes, some of them were matters of record and I [fol. 641] have heard about them in court since then. What I mean to say is they were matters of record.

Q. And you believed them?

A. Why, surely, I accepted them as facts.

Q. Having accepted them as facts, did you form an impression by virtue thereof which was prejudicial to the defendants?

A. Conscientiously I have, yes, sir.

Q. You are now prejudiced against the defendants?

A. Now, under the standard of law, I think I am—I believe I am.

Q. That is your honest answer?

A. Yes, sir, absolutely.

Q. You will not be able to conscientiously lay aside that prejudice or put it aside if you are chosen as a juror?

A. I think I might be able to put it aside after I got in the jury box.

Q. But at this moment you have not as yet laid aside that prejudice which you gathered in this case against the defendants?

A. No, sir, I have not laid it aside.

Q. The best you can say is if you are chosen you think you might be able to lay it aside?

A. Yes, sir.

Q. You are not even sure of your ability to do that?

A. It would depend upon the evidence.

Q. And that would depend upon the evidence, that would have to be furnished by the defense in this case; isn't that so?

A. Or else the District Attorney would present a very weak case.

Q. In other words, you would require Mr. Turkus in this [fol. 642] case—Question withdrawn.

Q. In your present state of mind it would require a very weak case on the part of the prosecution for you to lay aside the prejudice present in your mind?

A. Conscientiously, I am afraid it would.

Q. That is not the requirement of the law, you understand that?

A. I understand that perfectly.

Q. Being an experienced and intelligent individual, and having a right to feel that way, you say that is your honest opinion?

A. Oh, absolutely.

Mr. Barshay: Challenge for cause—all defendants join in the challenge.

HENRY R. LATHROP was then sworn on the challenge.

By Mr. Barshay:

Q. Would your answers be the same, now that you are under oath?

A. Yes, sir.

By Mr. Rosenthal:

Q. You have honestly stated to Mr. Barshay that you have a prejudice as you are sitting here now.

A. It is a bias, at any rate.

Q. You also said you think you might be able, if you were sworn as a juror, to lay that prejudice aside?

A. Yes, sir.

Q. Isn't it true that in the state of mind you are in, that the quality of proof which would be required either by the [fol. 643] prosecution or by the defense—the standard—because of your prejudice, would be different than what would be required by you if that prejudice did not exist?

A. I am afraid so, yes, sir.

Mr. Barshay: We all join in the challenge.

By Mr. Turkus:

Q. Do you recall the gentleman who sat in the chair before you, who was down in the area there—who said he could decide this case on the merits?

A. The one immediately preceding me, yes.

Q. Well, I understand from what you said to Mr. Barshay that you read something in the newspaper which came up since you received your notice as a special juror in this specific case and that it was simply a squip—I think that was your language.

A. Yes, sir, a very short article, one of the *Tribune* and one in the *Sun*.

Q. Bearing in mind that the Judge will charge you in the case that the burden of proof is upon the prosecution to establish guilt beyond a reasonable doubt and that that burden never lessens nor increases; would you accept such a charge of law from the Judge?

A. Certainly.

Q. Is it repugnant to your sense of fair play—I mean, is it consonant with your sense of fair play, that the prosecutor have the burden of establishing the guilt beyond a reasonable doubt and that that burden neither be lessened nor increased.

[fol. 644] A. No, I don't think that is repugnant to my belief.

By the Court:

Q. The question is whether you would be influenced by what you heard in deciding the case—the question of inability to disregard or lay aside what you have received as an impression.

A. I think I might lay it aside.

Q. That is not enough. Do you know if you would?

A. No, I do not know that I would lay it aside. I cannot say that conscientiously. I would make an effort to.

[fol. 645] The Court: That is not enough.

By Mr. Turkus:

Q. You are a man of experience; you know your own mind and your own feelings. The People of the State of New York and the defendants at the bar are entitled to have a jury of twelve men decide the case uninfluenced by anything except evidence in the case. Do you think you could take your place in this jury box and comply with your oath of office and try the case on the evidence devoid of outside influence by way of newspaper articles?

A. I do not.

The Court: Challenge sustained.

(A recess was then taken until two p. m., the Court admonishing the talesmen not to discuss the case and to remember the previous admonition given.)

[fol. 646] Afternoon Session—Trial Resumed.

The Court: The jurors who are not already in the box may go until tomorrow morning at ten o'clock. You are requested not to talk about the case; let nobody talk to you about it. Please read nothing, especially the *Mirror*. Those *Mirror* articles which are still being published seem to be raising havoc with the jurors in this case, and there is no way of the Court's stopping them under the law.

Ten o'clock tomorrow morning.

SAMUEL A. LIEBERSON, of 1947 Ocean Avenue, Brooklyn, New York, was examined as to his qualifications.

By Mr. Turkus:

Q. Mr. Lieberman, you are listed as living at 1947 Ocean Avenue; is that correct?

A. That is right.

Q. What section of Brooklyn is that? Is that around Avenue T?

A. Avenue O.

Q. Is that near the Midwood section?

The Court: It is Kings Highway.

A. Kings Highway.

Q. Have you lived there for a number of years?

A. Thirteen years.

Q. Prior to that time did you reside in Brooklyn?

A. I lived in Brooklyn, yes.

Mr. Talley: Will you speak up, kindly, so we can hear you?

[fol. 647] The Talesman: Yes, I will, once I get my composure.

Q. The trestle board lists your profession as that of an architect; is that correct?

A. Yes.

Q. Have you been an architect for a number of years?

A. Thirty years.

Q. And are you in practice for yourself?

A. I am.

Q. Where do you maintain your office?

A. At the present time it is at my home.

Q. At 1947 Ocean Avenue?

A. That is right.

Q. Prior to that time did you have an office in an office building?

A. I was connected with the Cudahy Packing Company as architect in their construction.

Q. Did you come in contact with their counsel?

A. No.

Q. Lawyers?

A. No.

Q. Lord & Curran?

A. No.

Q. Do you know Mannie Stern?

A. No, I do not.

Q. Or Tom Curran?

A. I do not.

Q. If I understood you correctly, the office was in Manhattan, the Cudahy Packing?

A. Well, the general offices are in Chicago and I traveled considerably for them from state to state, erecting these various buildings.

Q. And refrigeration and other matters?

A. That is what I specialized in.

Q. Did you do any work down at the Fort Greene Market?

A. Yes, I did some work there.

[fol. 648] Q. I take it by now you understand the nature of the charge in this case?

A. I do.

Q. The defendants are charged with the crime of murder in the first degree for the killing of a man named Joseph Rosen. Is there anything about the nature of the charge which would impair your service as a jurymen?

A. No.

Q. Have you any scruple, conscientious or otherwise, against capital punishment?

A. I have not.

By the Court:

Q. Do you live on that block with the Jewish settlement?

A. No, that is further up.

Q. That is near Quentin Road?

A. Yes. You mean the temple?

Q. It is in the middle of the block on your side of the street?

A. Yes.

Q. That is all residential along there?

A. Yes, sir.

Q. You have no office facilities except in your own home?

A. One of the rooms converted into a drafting room.

Q. Are you making a living there?

A. I have been for the past eight months. Prior to that I was engaged in small home building in Long Island.

Q. That is free-lancing?

A. Yes.

By Mr. Turkus:

Q. If I understood your response correctly to Judge Taylor, you have no further connection with the Cudahy Packing Company?

A. No, sir.

[fol. 649] Q. And you are engaging in the practice of the profession as a free-lance?

A. That is right.

By the Court:

Q. In business for yourself?

A. Whenever I can get a client. I am licensed.

Q. Do you work in a locality?

A. Anywhere.

By Mr. Turkus:

Q. As architect you come into frequent contact, do you not, with representatives of different unions?

A. No, I do not.

Q. Does your work in any wise entail any conferences with union officials?

A. No, it has not so far.

Q. Do you draw plans for buildings, the erection of buildings?

A. Yes, I do.

Q. And it is upon those plans that the building is finally erected?

A. That is right.

Q. You deal directly, then, with the builder?

A. No, it is either an owner or a lessee, whoever wants the job done, that retains my services.

Q. Does the architect have any supervision of the work that is being done?

A. **The law requires an architect or engineer to supervise construction or someone who has had ten years of construction experience.**

Q. So that that would bring you on the job almost daily, would it not, when a job is under construction?

A. In architect supervision, not necessarily daily. He [fol. 650] makes several visits to the site.

Q. And that is pass approval upon the different states of progress, when the brickwork goes on, plaster work, electrical work?

A. That is right.

Q. And of course, of necessity, you have contact, then, with people in the building trades or unions?

A. I never have had contact with union people in construction work.

Q. Has it been all non-union work?

A. Not necessarily, but I have never had dealings with them.

Q. Have you had any contacts, directly or indirectly, at any time during your experience with persons or firms in the Brownsville-East New York area of Brooklyn?

A. No, sir.

Q. Or with any individuals or firms in the garment district in Manhattan?

A. No.

Q. Do you know anyone connected, or have you had any contact with anyone associated in the clothing district in Manhattan?

A. I have not.

Q. Or with clothing truckers?

A. No.

Q. Do you know any union officials of the Amalgamated Clothing Workers of America?

A. I do not.

Q. Has the name of Potofsky any significance to you, a union official of the Amalgamated?

A. No, it has not.

Q. Or that of Murray Weinstein, manager of the clothing Cutters Union?

A. No.

Q. Is there any significance to the name of Samuel Katz?
[fol. 651] A. No.

Q. A business agent of Local 4 of the Cutters Union?

A. No.

Q. Is the name of Bruno Belia at all familiar to you?

A. No.

Q. Or that of Salvatore Marazzano?

A. No.

Q. Are you acquainted with any representative or official of Local 240 of the Clothing Drivers & Helpers Union?

A. I am not.

Q. Did you ever hear the name of Philip Orlofsky, one time connected with the Amalgamated Clothing Workers of America?

A. I have not.

Q. Did business or any other contact bring you in connection with anyone in the Teamsters Union?

A. No, it has not.

Q. Am I correct in assuming that as far as you can recall you have had no contact as yet with any union representatives or officials, even of the building trades?

A. That is correct.

Q. Is there any significance to the name of Max Silverman?

A. No.

Q. Or that of Wolfie Goldis?

A. No.

Q. Or the name of William or Willie Alberts, a one-time bondsman?

A. No.

Q. Does your work as an architect bring you in contact with lawyers, members of the bar?

A. I have relatives who are lawyers. Sometimes I have to consult with them.

Q. Is the relationship close?

A. Nephews.

Q. Are they practicing in Brooklyn?

A. Yes, they are.

[fol. 652] Q. Do you practice as a firm?

A. As a firm.

Q. Would it be the same name as yours, Lieberman?

A. No, nephews by marriage.

Q. Would you mind telling me the name?

A. One is Irving Gersten at 26 Court Street and the other one is Harry Feldman at 26 Court Street.

Q. Do you know whether Harry Feldman at one time worked for a lawyer by the name of Arthur J. Stern?

A. I know he did not.

Q. Do you know the type of practice that they engage in?

A. Well, Gersten is mostly real estate and Feldman is general practice.

Q. As far as you know, neither specializes in the defense of criminal cases?

A. I don't believe they ever tried criminal cases.

Q. Is there any significance in your mind to the names of Bellanca and Tosca?

A. I heard them in court, but I do not know them.

Q. Any familiarity with the name of Emanuel Buchalter?

A. That is the same answer. I do not know.

Q. Or that of Philip Buchalter or Kowas?

A. No.

Q. And is that true of the name of Terry Burns?

A. That is right.

Q. And an individual by the name of Abe Slabow? Since your name appeared on this special jury list and specifically [fol. 653] since you got your slip, did anyone speak to you about the case?

A. We did talk about it casually at home; but that is all.

Q. And were the discussions with respect to the possibility of your service as a juror in the case?

A. That was it.

Q. I take it, in common with the rest of us, you read newspapers?

A. I do.

Q. Is the name Buchalter familiar to you by reading of newspaper accounts?

A. That is where I first met the name.

Q. Is the name of Lepke familiar from newspaper accounts?

A. I saw that name mentioned too.

Q. And that of Gurrah?

A. I have seen that name in the papers.

Q. And I take it that you are familiar with the name of Harry (Pittsburgh Phil) Strauss?

A. I have seen that name in the papers.

Q. And that of Martin (Bugsy) Goldstein?

A. I don't recall that name.

Q. Do you remember reading of the name of Harry (Happy) Maione?

A. I don't remember that.

Q. Or Frank (The Dasher) Abbandando?

A. I heard you mention it. That is the first time I heard it.

Q. I mean press reading.

A. Sir?

Q. I mean reading from the press, from articles in the press.

A. I never seen that name in the press.

Q. Are you familiar with the name Capone or Weiss from [fol. 654] newspaper reading?

A. I have seen their names in print.

Q. And have you been reading these accounts since Judge O'Dwyer was District Attorney?

A. We were advised not to read the paper, and I tried to avoid these articles.

Q. Judge O'Dwyer has been District Attorney since January, 1940, and that was the period of time that I was directing your attention to. In other words, have you read these articles since January, 1940?

A. Yes, I have.

Q. From these newspaper accounts in which you have read these names, have you an impression?

Mr. Climenko: Object to the form of the question.

The Court: Overruled.

Mr. Climenko: Exception.

A. May I get that question again, please?

Q. (Pending question read.)

A. I have not.

Q. And I take it, then, that you formed no opinion from any articles you have read in the press?

A. That is right.

Q. And nothing even so definite as an impression from any reading?

A. No.

By the Court:

Q. Do you mind telling us your club affiliations?

A. I am a member of the New York State Architects Association.

Q. Any social clubs?

A. No, sir.

Q. The Capital Club is near you?

A. It is maybe four or five blocks.

[fol. 655] Mr. Talley: We do not hear the talesman.

The Court: "Maybe four or five blocks," he said.

Q. Do you ever go there?

A. I do not.

By Mr. Turkus:

Q. Did you ever attend any lecture or discussion on the apprehension of criminals and prosecution of crime?

A. I have not.

Q. I take it, then, that you belong to no law enforcement society?

A. No, sir.

Q. As a society promulgated for the specific job of advancing the apprehension and the prosecution of criminals for crime?

A. No.

Q. Are your activities, then, limited to the Architects Association?

A. Yes.

Q. And you say you have been conducting your business from your home now for the past ten months?

A. About eight months.

Q. These defendants at the bar are represented by nine lawyers. Buchalter is represented by Mr. Barshay, a former Assistant District Attorney. Do you know Mr. Barshay?

A. I do not.

Q. Buchalter is likewise represented by Mr. Bertram Wegman. Do you know him?

A. No, I do not.

Q. Former Assistant United States Attorney. Or Mr. Jesse Climenko?

A. No.

Q. Do you know anyone attached to or connected with the law offices of these gentlemen?

A. I do not.

[fol. 656] Q. Defendant Weiss is represented by former Judge Talley. Do you know him?

A. By reputation.

Q. Never came into personal contact with him?

A. I did not.

Q. Do you know Mr. James I. Cuff, a former Assistant District Attorney?

A. By reputation.

Q. Or Mr. Murray Kriendler, a former Assistant United States Attorney?

A. No.

Q. Do you know Mr. Sidney Rosenthal?

A. No.

Q. Not even by reputation?

A. Well, I have heard his name mentioned since I am on this case.

Q. Or Mr. Leon Fischbein?

A. No.

Q. Or Mr. Emanuel Rosenberg?

A. No.

Q. Do you know any person associated with those lawyers in their law offices?

A. I do not.

Q. Do you know intimately any member of the bar who specializes in the trial of criminal cases?

A. I do not.

Q. Have you heretofore had the benefit of jury experience in a criminal case?

A. No.

Q. In any type of litigation?

A. I served in Surrogate's Court in 1939.

Q. I take it that was in connection with will cases?

A. That is right.

Q. Did those cases go to a conclusion, by that, did you have the Judge's instruction on the law?

A. Yes.

Q. If accepted as a juror in this case, am I safe in assuming [fol. 657] ing that you will take the instructions of law exclusively from the trial justice?

A. Yes.

Q. That is Judge Taylor. Nobody else in the case?

A. That is right.

Q. In your business as an architect, I take it you have come in contact with various persons associated in the City departments; is that right?

A. That is right.

Q. Your daily business brings you into the Municipal Building, does it not?

A. Yes, it does.

Q. And you frequently go to the fifth floor of that building?

A. Eighth floor.

Q. Sometimes the fifth?

A. Sometimes.

Q. Does business bring you in contact with the Corporation Counsel of the City of New York at times?

A. I have not had any contact with that office.

By the Court:

Q. When you say "architect," do you mean building architect, or do you specialize along some particular line of construction?

A. When I was with the Cudahy people I specialized in abattoir construction, buildings under refrigeration.

Q. That is all over the United States?

A. That is right; but since I have disconnected with them I have been in private practice, general practice.

By Mr. Turkus:

Q. Are you presently working on any specific enterprise [fol. 658] as an architect?

A. Yes, I have a job going on at 39th Street.

Q. 39th Street? Is that the Borough Park section of Brooklyn?

A. I imagine that is what they call it, 39th Street and 14th Avenue.

Q. Did you ever hear of the name of one Irving Feinstein?

A. No.

By the Court:

Q. 39th Street and 14th Avenue, what is that, Continental Steel Company?

A. No, it is a section where—this happens to be a poultry slaughter house. They are going to alter the building. That is the job I have, a plan job.

Q. A railroad runs right there?

A. Yes.

Q. And those business concerns sort of cluster along that line of railroad?

A. There is freight yards there.

Q. Long Island Railroad?

A. That is right.

By Mr. Turkus:

Q. Has the name of Albert Anastasio any significance to you?

A. I saw it mentioned in the papers.

Q. Did you hear that name discussed in the vicinity of where you live?

A. No.

Q. Have you engaged in any discussions in connection with any investigation conducted by Judge O'Dwyer as prosecutor?

A. No.

Q. Have you listened to any discussions?

A. Not that I recall.

Q. Are these articles that you read fresh in your mind? [fol. 659] A. I never pay much, or lay much, stress to newspaper items.

Q. Well, of course, that does not quite answer the question. Nevertheless, even though you do not pay too much stress to newspaper articles, what I am trying to find out, is there anything of what you read that persists in your mind?

A. I remember the story in connection with the case.

Q. Does your memory go back to the time when Joseph Rosen was actually killed?

A. I did not know he was killed. I don't remember reading that.

Q. Then your memory goes back to a more recent account of the O'Dwyer investigation; is that it?

A. Yes, I believe so.

Q. What papers do you customarily read, Mr. Lieberman?

A. *Tribune*, *World-Telegram*, *Times*.

Q. I take it, then, that you read the *World-Telegram* as an evening paper?

A. That is right.

Q. I believe in excess of fifty times in the past year there were front-sheet articles on the O'Dwyer investigation in the *World-Telegram*. Do you recall that?

A. I could not say as to how many times I have seen it, but I may have seen these items mentioned.

Q. Are you left with any impression as to the reading in the *World-Telegram* in connection with the investigation?

A. Only so far as remembering the story, that is all, in connection with the item.

Q. Now directing your attention to the defendants in this [fol. 660] case, is there anything that you have read that is in your mind to the detriment of the defendants on trial?

A. No.

Q. So as far as any reading matter is concerned, you are completely unaffected with these defendants, by that I mean you have no prejudice against them in any shape or form?

A. I have no prejudice or bias.

Q. In reading the various newspaper accounts did you come across the name of various persons who had been cooperating with the District Attorney?

A. I would not remember that. I would not remember the names specifically. Some names mentioned, but I could not remember them, could not repeat them.

Q. In the reading matter that you read, did you read anything of the Rosen case?

A. Recently, yes.

Q. And specifically, did you read that he at the time of his death was operating a candy store?

A. That is right.

Q. And did you read of certain alleged motive- for the killing, as set forth in the newspaper article?

A. Yes.

Q. And do you remember reading of the matter set forth in the newspaper article as to the prospective witnesses that might be called in the case?

A. I don't remember such article.

Q. Do you remember specifically reading in the articles as to the alleged part played in the murder by these defendants?

Mr. Barshay: If your Honor pleases, I object to going into great detail of what was in those articles as tending to prejudice the juror.

[fol. 661] The Court: Overruled.

Mr. Barshay: Exception, sir.

Q. (Pending question read.)

A. I do.

Q. So that those matters are presently in your mind; is that correct?

A. Well, yes.

Q. Have those articles left an impression with you?

A. They have not impressed me, but I do remember the story.

Q. Well, in order to remember the story it must have left some impression upon your mind.

Mr. Rosenthal: I object to that as argumentative.

Mr. Turkus: I have not even finished. I will withdraw it in that form.

The Court: He may not have any impression as to the truth or falsity of the story.

Mr. Turkus: That is what I am trying to elicit.

The Court: He may simply have a recollection of having read it, without forming any opinion.

Q. What I am trying to find out, Mr. Lieberman, is this: You have a distinct recollection of certain facts set forth in these articles?

A. Yes.

Q. Certain facts allegedly committed by these defendants?

A. Yes.

Q. Then you tell me that you have no impression. What I am trying to find out is just what is the state of your mind with respect to that reading matter.

A. Well, as the Judge just mentioned, I have formed no [fol. 662] opinion as to the guilt or innocence of these participants in this crime, but in so far as the story is concerned, that is public gossip; I mean, everybody — reads newspapers sees these articles.

Q. That is true.

A. I have formed no opinion.

Q. In connection with your visitations to the Municipal Building in Brooklyn, did you make the acquaintance of

any member of Mr. Geoghan's staff in your past experience?

A. I met Mr. Geoghan at the Unity Club at a dinner given there once—was introduced to him.

Q. Is that the limit of your acquaintance with Mr. Geoghan?

A. Just the introduction; that was all.

Q. Have you attended any series of discussions at the Unity Club?

A. No, I was a guest there one evening, just one evening.

Q. Did you know any other member of Mr. Geoghan's staff?

A. No, I did not.

By the Court:

Q. That was the United Charities?

A. No, I had a friend who ran for public office, and that was the occasion—they had the dinner there.

Q. What was his name?

A. He died recently. Milton Hertz. He ran for County Judge.

Mr. Talley: Mr. Lieberman, you will do us a great favor if you let us hear what you say.

By Mr. Turkus:

[fol. 663] Q. Were you a close friend of Milton Hertz?

A. Very intimate.

By the Court:

Q. His brother-in-law was a builder right down your way, wasn't he?

A. No.

Q. He had a real estate office?

A. That is right, but not very active.

Q. Milton lived on the block behind you?

A. Directly behind me, near N on Bedford Avenue.

Q. I thought he lived on Kenmore Place, one block from Ocean Avenue.

A. Some time back.

Q. What was his father-in-law's name?

A. Lackof.

Q. His office was down by the Avenue J station?

A. That is right.

Q. And you use the Avenue L station?

A. No, I get off at Kings Highway where I live.

Q. That is the next one to N?

A. That is the next one to M, on the station stop. M, Kings Highway.

By Mr. Turkus:

Q. Were you acquainted with Mr. Hertz's partner, Charles Wilson?

A. Yes, I know him well.

Q. Did you ever discuss with Mr. Hertz any of the defense cases that he had, specifically against the Amen investigation?

A. No indeed.

Q. Did you ever discuss the progress or conduct of any [fol. 664] criminal case with any member of the bar that you know?

A. No.

Q. Do you know Judge O'Dwyer, the District Attorney of the County?

A. By reputation.

Q. Do you know any member of his staff?

A. I do not.

Q. In the Surrogate's Court did you serve for a week?

A. I was there a week.

Q. Was that before Judge Wingate in Brooklyn?

A. Wingate, yes.

Q. In any of the newspaper articles that you have read, have you read the names of accomplices in certain of the O'Dwyer investigations?

A. I don't recall; in other words, I could not mention any of those names. I don't remember them.

Q. Is your state of mind such that you can feel that on occasion even a man of bad character and bad reputation and former criminal habits can tell the truth?

A. I believe I could listen to him open-mindedly and believe it possible that he could tell the truth.

By the Court:

Q. You would scrutinize it carefully?

A. Yes indeed.

By Mr. Turkus:

Q. Have you any inherent bias or prejudice against testimony emanating from an accomplice as would cause you to close your ears to it under all circumstances?

A. I would expect his testimony to be corroborated.

Q. So does the law. If there were no corroboration of ac-[fol. 665] complices there would not be any case, but what I am asking you is this, sir: Would you close your ears to the testimony of an accomplice under any circumstances solely because that testimony emanated from a character of the type of an accomplice?

A. No.

Q. Now as to the degree of other proof, neither would you require that every single thing the accomplice said be substantiated?

Mr. Barshay: Objected to. It is a question of law.

The Court: Finish your question. I will have to rule against you.

Mr. Turkus: I am going to withdraw it, since the ruling would be adverse anyway, but I would like to complete a question before I have a ruling on it.

The Court: Complete it.

Mr. Turkus: There is no sense now. Your Honor has indicated that the ruling would be adverse.

By the Court:

Q. If the Judge charges you that under the law an accomplice must be corroborated by evidence tending to connect him with the commission of the crime, will you follow that ruling?

A. I will.

Q. And require that there be such corroboration?

A. Yes.

Q. Before you will accept his testimony?

A. That is right.

By Mr. Turkus:

[fol. 666] Q. Before you heard the rule of law, did you have any different notion? Just yes or no?

A. No.

Q. Did you understand the law just as the Judge had given it to you?

A. I have heard it so many times mentioned here since I have been in court.

Q. Before hearing it mentioned in this court-room, did you have a different notion? Just yes or no.

A. No.

Q. Did you have any prejudice or any bias against a prosecution which uses an accomplice to testify against the co-participants in the commission of the murder?

A. I have not.

Q. Do you have any bias or prejudice against the prosecutor for the use of that kind of testimony?

A. No.

Q. Do you feel that you can approach a case in which accomplice testimony is used without any bias or prejudice either way?

A. I do.

Q. Is your business such that a protracted trial would inconvenience you?

A. It would not do me a lot of good.

Q. Well, would it be such as to affect your conduct on the jury and your ability to listen to the evidence?

A. No.

Q. And by your answer, then, I think you express an indication of not being keenly desirous of serving. If you have to, all right, and if you do not have to you are content, too?

A. Yes.

Q. Will you take the law in its every aspect from the trial judge?

A. I will.

[fol. 667] Q. If any defendant invokes a defense, for example, a defense of alibi, will you take the law with regard thereto implicitly from the trial judge?

A. Yes.

Q. Do you find any fault with the requirement of law that defendants are presumed to be innocent until their guilt is established beyond a reasonable doubt?

A. I do not.

Q. Do you find fault with the proposition of law that the burden is upon a prosecutor to establish guilt beyond a reasonable doubt and that that burden is never increased nor diminished?

A. I do not.

Q. By virtue of anything that you may read in the press, would you expect The People of the State to prove more or less or just beyond a reasonable doubt?

A. Beyond a reasonable doubt.

Q. From any reading matter that you have had in the press, would you expect a defendant to come forward with evidence?

A. No.

Q. Do you find anything repugnant with the law which says that a defendant need offer no evidence in his behalf, that he may submit his verdict to the jury upon the evidence adduced by the People?

A. No.

Q. You find no fault with that?

A. No fault.

Q. Do you find any fault with expert testimony of any kind, nature or description?

A. No.

Q. Have you heretofore testified as an expert yourself in [fol. 668] any litigation?

A. I have not.

Q. Can you approach the testimony of experts with an open mind?

A. I can.

Q. Be it ballistic, handwriting, or any other type of testimony?

A. Yes.

Q. In anything that you have read, did you read the name of a Mrs. Dorothy Walker?

A. No.

Q. Are you in sympathy with the enforcement of the Penal Law of the State of New York?

A. I am.

Q. You have had no contact with anyone in the prior administration in the District Attorney's office?

A. No.

Q. You have had no contact by way of politics with any of the lawyers in the case?

A. No.

Q. If accepted as a juror, can you approach the problem or the issue in this case—I should not say the word "problem," it is the issue—with an open mind, ready to deal out even-handed justice between The People of the State and the defendants at the bar?

A. Yes.

Q. Is there anything concerning which I have made no inquiry which would affect your ability to serve as a juror?

A. No.

Q. Nothing at all?

A. No.

Q. If selected as a juror, will you listen to fair and reasonable argument by the other jurors?

A. I will.

Q. In your every-day business experience, have you had occasion to decide problems in conjunction with others, make decisions in conjunction with others?

[fol. 669] A. Oh, yes.

Q. Where one opinion is sometimes subordinated to another and a compromise is effected—I mean, in your architectural work, for example, you may go up to the Building Department, he may say the law is one thing, you may say the law is the other, and do you sit down and reason it out?

A. We do that quite often.

Q. Without rancor and without bitterness?

A. That is right.

Q. If selected as a juror in this case, will you reason out the issue of this case without rancor and without bitterness, and with common sense and understanding?

A. I will.

Q. Is there anything that you feel the prosecutor should know going to your qualifications as a juror in the case?

A. Nothing more than he knows already.

Q. Let me say this to you, Mr. Lieberman: Assuming that you were accepted as a juror and you heard all the testimony in the case, you listened to the defense lawyers tell you how they viewed it, the District Attorney tell you how he views the evidence, and then the learned Court charges on the law, you talk the case over with your other jurymen in the jury room and you come to the conclusion and you are satisfied beyond a reasonable doubt that at the bar of justice in this County Court are three guilty men, guilty of the crime of murder in the first degree—Buchalter, Weiss, and Capone; would you have any fear in saying so?

A. No, I would not.

[fol. 670] Q. Have any reluctance?

A. No.

Q. Any hesitation or embarrassment?

A. No.

By Mr. Barshay:

Q. Mr. Lieberman, have you ever been a victim of a crime?

A. No, I have not.

Q. Have you any intimates in the Police Department?

A. No.

Q. Since your coming here as a prospective juror, have you with the other jurors, discussed this case?

A. We have talked about it casually on the bench there.

Q. And as the result of that discussion have you by any chance formed any opinion prejudicial to any of the defendants?

A. No.

Q. So now you are free of bias or prejudice either as the result of reading, speaking, or observation; am I right?

A. That is right.

Q. Nothing in the back of your head which in any wise could be interpreted as any indication of prejudice against any of these defendants?

A. That is right.

Q. You said, Mr. Lieberman, that you had no experience as a juror at all?

A. I did not say that.

Mr. Turkus: Surrogate's Court.

Q. Talking about criminal cases.

A. Oh, yes.

Q. Because you will find it completely different.

A. That is right.

Q. You understand that? Have you ever joined any association for the prevention of crime?

[fol. 671] A. No, I have not.

Q. Have you ever been a Grand Juror, Federal or State?

A. No.

Q. Mr. Turkus has read to you a list of names. Have they impressed you at all to the detriment of the defendants?

A. No.

Q. Unless and until any of those names have a meaning by way of evidence in this case, you will completely dismiss them from your mind, won't you?

A. That is right.

Q. You won't even let innuendo creep in with respect to the names read?

A. That is right.

Q. As a matter of fact, you will free your mind of atmosphere of any kind, won't you?

A. That is right.

Q. And so when we speak of the presumption of innocence, you will keep in mind that it is only a matter of procedure that the defendants are brought in here under guard, that is all. It raises no prejudice against them whatever; isn't that so?

A. Yes.

Q. The fact that they sit here with the marshals or guards or court attendants is nothing against them; isn't that so?

A. That is right.

Q. You believe that firmly?

A. I do.

Q. You won't use it against them?

A. No.

Q. The fact that an indictment has been filed against them is no indication in your mind that where there is smoke there is fire, is there?

A. That is right.

Q. It is an accusation?

A. Yes.

[fol. 672] Q. You understand that? And now if you are chosen as a juror, the fact that they said "Not guilty" to the accusation will raise an issue for you to determine. Am I right?

A. Yes.

Q. So our defendants start from scratch, free of sympathy for them, free of prejudice against them; is that your answer?

A. That is correct.

Q. And if the Court shall tell you that encompassed in the enforcement of the criminal law there is a presumption of innocence which remains with the defendants throughout the trial and until all of you agree that you have been convinced beyond a reasonable doubt, you will follow that law implicitly?

A. That is right.

Q. You owe no duty to either side in this case; isn't that so?

A. That is so.

Mr. Turkus: He does owe a duty.

The Court: What is that?

Mr. Turkus: Mr. Barshay is putting the words into the prospective juror's mouth, that he owes no duty to either side. He does owe a duty.

Mr. Barshay: Will you let me develop it, please?

Q. You do not feel you are obligated to either side, do you?

A. When I said yes in the previous question, that is what I mean.

Q. You mean that you are obligated to do your oath as a juror, to perform your oath as a juror, fairly and squarely?

A. That is right.

[fol. 673] Q. That is the only obligation you owe?

A. That is right.

Q. You have not any feeling that because you were called as a special juror by the State, that you have a special obligation to perform for the State?

A. No.

Q. Likewise, if the defense should accept you, I am sure you won't be beholden to them for any special obligation to them?

A. No.

Q. You will be an umpire of the facts, judge of the facts?

A. Yes.

By the Court:

Q. Will you tell us where you lived before you went to Ocean Avenue?

A. I lived on Willoughby Avenue.

Q. Near where?

A. Near Tompkins.

Q. How long ago was that?

A. That is about thirteen years ago, when I came up here.

Q. You lived there all your life before that?

A. No, that is since my marriage, nineteen years, I have been living in Brooklyn. Prior to that I lived in the Bronx. I had been traveling at the time.

Q. No other permanent address?

A. No.

By Mr. Barshay:

Q. If the Court shall instruct you that at all times throughout the prosecution—the burden of proof rests with the prosecution, will you accept that as the law?

A. Yes.

Q. Will you carry it out faithfully?

A. I will.

[fol. 674] Q. And so if any juror should say, "Well, the defendant made no explanation of this charge against him," you will reason with him and call to his attention, if that should arise, that the defendant need not prove a single thing? Isn't that so?

A. Yes.

Q. You believe that firmly?

A. Yes.

Q. The number of witnesses that the prosecution may call will have no effect upon you unless the quality of their testimony convinces you beyond a reasonable doubt of the defendants' guilt?

A. That is right.

Q. Only then?

A. Yes.

Q. So it is the quality of the proof that will determine and not the quantity?

A. That is right.

Q. And if in the face of fifty witnesses—if there shall be fifty—and the choice of counsel for defendant Buchalter there shall be no answer, you will not hold it against Mr. Buchalter if the Court shall so instruct you?

A. No.

Q. You have no feeling?

A. No.

Q. Against Mr. Buchalter, have you?

A. No.

Q. By whatever name you may have read of him, you have no prejudice against him?

A. No.

Q. The Court shall define to you what is reasonable doubt. Have you any idea of your own now as to the definition of that? Just yes or no.

A. Yes.

Q. And if you find that your definition is in conflict with [fol. 675] that of the Court, you will subordinate your own and accept the Court's, won't you?

A. I would.

Q. And may I ask you now, are you ready to dismiss all knowledge of principles of law which you have and hold yourself open to the Court's instruction on every point?

A. May you ask me?

Q. Yes.

A. Yes, sure.

Q. You are sure of that?

A. Yes, indeed.

Q. You have never discussed propositions of criminal law with anyone?

A. No.

Q. Now, Mr. Turkus has spoken to you quite frankly that he intends to use accomplice testimony—not to be over-repetitious, but briefly to review—will you see *see* who this accomplice is before you accept his testimony? Will you judge him, look at him, hear him? Will you?

A. I will.

Q. And if out of his own mouth he tells you that he is a murderer and a thief and a perjurer and runs all the way up and down the line as a person who has led almost exclusively a life of crime, then will you take and weigh his testimony with extreme caution and care? Will you?

A. I will.

Q. And if there is more than one person who says he is an accomplice, will you follow the same rule with respect to that other person?

A. Yes.

Q. And if the Court shall tell you that one accomplice cannot corroborate another, you will follow that instruction [fol. 676] faithfully, will you not?

A. Yes.

Q. And you will determine in your own mind, will you not, Mr. Lieberman, that when a man takes the stand and says, "I am going to tell the truth," and swears to tell the truth, it does not mean that he will unless and until you find from his testimony, taking into consideration his past life, that there is some truth in it; isn't that so?

A. Yes.

Mr. Turkus: May I have that question read?

Q. You will search the reason for giving his testimony: What does he expect for it? What is the price? won't you?

A. Yes.

Q. You will want to know whether or not he has a motive in giving such testimony?

A. I probably would.

Q. You will want to know whether he expects any reward, won't you?

A. Yes.

Q. And the mere fact that he may say on the stand, "I don't expect any reward; I have not been promised anything for my testimony," it does not necessarily mean that you will believe it?

A. That is a question.

Q. For you to decide?

A. That is right.

Q. Having passed that part of the testimony, we will get to the corroborating testimony, that which the law says must tend to connect a defendant with the commission of a crime. You will want to know who is offering this corroborating testimony; am I right?

A. Yes.

[fol. 677] Q. And if that person who takes the stand says that somebody said so and so to me, you will want to look into his own record, won't you, before you will accept his testimony?

A. Yes.

Q. And if he says he is a murderer and a thief and a perjurer, robber, burglar, and pimp, with each demerit mark against him you will, with greater care, weigh that testimony?

A. I will.

Q. These three men are being tried together. Will you promise, sir, to consider the evidence as against each person as it is given from the witness stand and use it against that person only, unless and until his Honor shall charge you that you may use it in another fashion?

A. Yes.

Q. And in rendering a verdict in this case, you will consider the evidence as against each individual defendant, won't you?

A. Yes.

Q. They may be tried together, but you must render a separate verdict with respect to each one; is that so?

A. Yes.

Q. In the face of a case like this, a person must have courage to be a juror in order to render a verdict that reflects the truth. Have you that courage, sir?

A. I believe so.

Q. Will you exercise that courage, sir?

A. I shall.

Q. It sometimes might take more courage to say "Not guilty" than it does "Guilty." Will you exercise that courage if you fail to be convinced beyond a reasonable doubt?

A. I will.

Q. Can the defendant Buchalter safely entrust his legal rights—that is all he wants—to you?

A. He can.

[fol. 678] By Mr. Cuff:

Q. Mr. Lieberman, if in the wisdom of counsel one or more of the defendants should not take the witness stand in this case, would that leave any unfavorable impression in your mind?

A. No.

Q. And you will not draw any unfavorable inference from the failure to take the witness stand in that case?

A. I will not.

Q. And you promise to adhere to that?

A. Yes.

Q. If, after considering the evidence and listening to the arguments of counsel and the charge of the Court, you find that there is a reasonable doubt based upon something in the evidence, or some lack in the evidence, and after listening to the argument of your fellow jurors, that reasonable doubt still remains, will you then vote to acquit, if his Honor should charge that that is your duty?

A. Yes.

Q. And you will have the courage to do so?

A. I believe so.

Q. And you will have the courage to adhere to that opinion unless and until you are convinced by reasonable argument based upon the evidence or the lack of evidence that you should change it?

A. Yes.

Q. Will you have that courage?

A. Yes.

Q. As to the corroboration, the corroborative evidence that may be proffered by the prosecution to corroborate the accomplice, will you give careful scrutiny to the character [fol. 679] of the witnesses through whom that corroboration is offered?

A. I will.

Q. And will you apply to them the same tests as to credibility, as to their credibility, that you will apply to the accomplices' testimony?

A. Yes.

Q. By that I mean, so that it will be plain, Mr. Lieberman, if there is proof of criminal activities on their part or proof of character which would impair their credibility in your mind, you will give that proof careful scrutiny, will you not?

A. I will.

Q. Of course you realize, do you not, that the jurors who are selected to try this case are the sole judges of the fact and that neither his Honor nor anybody else can invade that province? Do you realize that?

A. I do.

Q. And you will be guided by his Honor's instructions in that respect too, will you not?

A. Yes, indeed.

Q. I think Mr. Turkus asked you about if you believe in the enforcement of the Penal Law. I wonder if you realize that the presumption of innocence, about which you have been questioned and other jurors have been questioned, and the fact that no unfavorable inference can be drawn from the failure of a defendant to take the witness stand, is a part of our Penal Law. Do you know that?—our criminal law?

A. I know it now, since you mention it.

Q. You realize that now?

A. Yes.

Q. And you will follow and adhere strictly to his Honor's [fol. 680] instructions in that respect as well as in every other respect with relation to the law; is that right?

A. Yes.

By Mr. Rosenthal:

Q. Mr. Lieberman, in the questioning by Mr. Turkus you were asked whether you had heard the name of a defendant

represented by myself and my two associates, before—Capone—and you said yes. You have not got this defendant confused, have you, with an Al Capone, about whom we have all heard?

A. No, I have not.

Q. Or any thought that he is in any wise connected because of the similarity of name?

A. I do not know of their relationship, but I know it is not the same fellow.

Q. On the question of this case, you understand each one of these defendants is merely being tried for what the indictment charges them with here? You realize that?

A. Yes.

Q. And you realize that all any attorney representing a defendant is asked to do in a criminal trial is either to rebut the evidence concerning the particular crime involved and not to in any wise try to prove any acts or facts which are not a part of the particular case?

A. Yes, I realize that.

Q. And, that being so, you are going to confine yourself, are you not, simply to the evidence of sworn witnesses as to what they claim the particular defendant did in respect to this particular crime; is that correct?

A. That is right.

Q. Before and while you were in the court-room here, but [fol. 681] while other jurymen were being examined, the question of alibi was dwelt upon. Do you recall that?

A. I remember that.

Q. Assuming that an alibi is offered on behalf of one of the defendants and assuming further that the Court charges you that the law of our land does not compel any defendant to prove his innocence—is that clear as far as I have gone?

A. Yes.

Q. And that at all times the defendant's guilt must be proven by credible evidence produced by The People—Is that clear?

A. That is clear.

Q. And assuming that the Court were to charge you that it is not necessary for you to believe the alibi itself, if the alibi raises a doubt in your mind as to the guilt of this defendant, that doubt created by the alibi is sufficient to warrant you in acquitting him; would you follow that law?

A. If the Judge so charged, yes.

Q. What I am trying to bring home to you is the fact that merely because we allege or prove an alibi, we do not assume any burden by doing that. Is that clear to you?

A. Yes.

Q. An alibi is sufficient if in your mind—I withdraw that and put it this way: If the Court charges you that the proof submitted by us by the alibi is sufficient in and of itself to raise a doubt where in the absence of the alibi a doubt would not exist, if that were charged to you by the Court, you would follow that, wouldn't you?

A. I would.

Q. You realize that even though the defendant may prove [fol. 682] an alibi, that does not relieve the District Attorney of the burden which he assumes to prove guilt? Is that clear to you?

A. That is clear.

Q. On the question of accomplice you have been asked by both Mr. Cuff and Mr. Barshay; by now you realize that whether one or more accomplices are called to testify that they cannot corroborate one another. Is that clear to you?

A. Yes.

Q. That there must be other independent evidence outside of the accomplice, whether it be one or fifty accomplices, connecting each of the defendants, before you could find the defendant guilty. Is that clear?

A. That is clear.

Q. Now, from indications it may appear that in this case that the District Attorney may offer—and we ask these questions without knowledge in advance of what exact proof the District Attorney will offer as the so-called independent evidence—an alleged admission made by one of the defendants—in other words, to put it plainly to you, that somebody was told by the defendant that he, the defendant, had committed the crime or had attended or had participated. Is that clear, what I mean by admission?

A. Yes, I understand what you say.

Q. Then if such be the case, will you examine the source from which the alleged admission comes?

A. Yes.

Q. And if you find that that source is one where the person who alleges it was made has been involved in a number of murders, that he has not even been prosecuted for, has [fol. 683] committed perjury on other occasions and has led a life of crime, will you scrutinize it very, very cauti-

ously and carefully before you come to a decision as to whether it has any truth to it or not?

A. Oh, sure.

Q. In other words, in judging the testimony of any witness, you will not only judge his action and demeanor on the stand, but you will take what proof there is, not what you have read in papers, but what proof in the case there is, as to who and what that particular individual has done in the past; isn't that true?

A. Yes.

Q. You do that in business, don't you?

A. Yes.

Q. If you found that a man has been known as a person who had not told the truth on numerous occasions and he came to sell you an article, you would be a little cautious before you believed what he said to you, wouldn't you?

A. Yes, sure.

Q. More so than if you knew a particular individual who had the highest of reputation came to you and made a representation to you, you would believe him, wouldn't you, without any question, if his argument was advanced fairly to you; isn't that true, sir?

A. Yes, I guess so.

Q. So in coming to a conclusion as to what force you will give, or what weight, to any witness's testimony, you are going to use the same standard that you would use of the ordinary course of business, and you would not leave your common sense outside the jury room, would you? Isn't that true?

A. No.

[fol. 684] Q. The facts may warrant in your mind in this case a verdict of acquittal. Merely because of the fact that you have never sat on a criminal jury before and some one or more of the members who are subsequently called and sworn may have, would you allow them to substitute their opinion for you on what the facts are, because of their experience or prior experience as jurymen in a criminal case?

A. They would have to convince me.

Q. Yes. You know, sir, that whether you have been sitting on a jury for the last fifty years in a criminal court or whether you are called for the first time, your rights

as a juryman are equal to that of any other juryman in the box; isn't that true?

A. That I understand.

Q. And if, after having reasoned calmly and dispassionately your theory of what the proof does substantiate or does not, with them, and they have advanced their argument, you are not convinced as to the logic of their argument, would you, merely because of the lateness of the hour or the number that was against you or something of that character, substitute the opinion which you honestly and conscientiously have for the opinion of the majority?

A. Not unless I was convinced that I was wrong.

Q. If such were your conviction, that one or more of these defendants were innocent, you would have the same courage that the District Attorney asked you to display in [fol. 685] finding a verdict of guilty, of coming in with a verdict of not guilty, wouldn't you?

A. I would.

Q. You know that your verdict is the verdict and cannot be questioned unless there is some outside influence which causes you to make it? You know that?

A. Yes.

Q. You know that no one can question the verdict of a juryman that is rendered on his conscience? You know that?

A. Yes.

Q. And in deciding this case, if you are accepted as a juryman, you will follow the guidance of your conscience in determining the guilt or innocence of any of these defendants, isn't that true?

A. I will.

Mr. Rosenthal: No challenge for cause.

Mr. Turkus: Just a couple of questions that have been suggested.

By Mr. Turkus:

Q. Mr. Rosenthal spoke to you about an alibi. He very properly said that whether the defendant invokes such a defense or not, you will expect the State to establish guilt beyond a reasonable doubt; is that correct?

A. That is correct.

Q. In the event that you find that any defendant interposes a false alibi, would you find an instruction of law

repugnant to your sense of fair play that a defendant who concocts and submits a false alibi, that that may be deemed by the jury to be an evidence of consciousness of guilt on the part of that defendant?

A. Yes, if the Court so charged me.

[fol. 686] Q. Would it be repugnant to your sense of fair play?

A. It would not be repugnant, no.

Q. Does it appear to be common sense?

Mr. Rosenthal: I object to that question.

The Court: Sustained. I think you said— I think it is discretionary.

Mr. Turkus: Yes, with the jury.

The Court: And the application of the rule of evidence must be consistent with common sense of the individual juror.

Mr. Turkus: What I want to find out, if there is anything repugnant by that kind of a charge.

The Court: The juror is not required to take that view. The juror is simply entitled to take that view—

Mr. Turkus: If he desires.

The Court: If it seems to him to be sensible.

Mr. Turkus: That is why I am asking the question.

The Court: Because a person who is not guilty may in zeal over-reach and put in a false alibi and in that way more or less hurt his case. That is for the jury to say.

Mr. Turkus: Yes.

The Court: Will you apply the law as given by the Court on that point?

The Talesman: I will.

Mr. Turkus: Something has been said—

The Court: I think what is probably a correct statement [fol. 687] of the law is that such evidence, if put in, may tend to shake the confidence of the juror as to the other evidence put in by the defense.

Mr. Turkus: I will not go into any further discussion on the law. The juror has indicated he will follow the law as given by the Court, and I take it endeavor conscientiously to apply it to the facts in the case.

The Talesman: Yes.

By Mr. Turkus:

Q. Something has been said by some other prospective salesman about the sentence of the defendant Buchalter. Would you permit the fact that he has been convicted of prior crime and under sentence, would you permit that to cause you to deviate from a proper disposition of this murder charge?

A. No.

Q. In the Rosen case. Would you permit it to cause you to relax your duty as a juror in this murder charge?

A. No.

By Mr. Barshay:

Q. And of course, by the same token, you would not cause that to prejudice you against Mr. Buchalter?

A. Yes.

Mr. Turkus: Peremptory.

MAX OLIVER, of 362 Linden Boulevard, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

[fol. 688] Q. Mr. Oliver, the trestle board lists your address as Linden Boulevard; is that correct?

A. That is correct.

Q. Is that in the Flatbush section of Brooklyn?

A. Yes, sir.

Q. Would it be down in one of those "East" streets?

A. That is right; it is one block off New York Avenue.

Q. Have you lived in Brooklyn a number of years?

A. About twenty years.

Q. The trestle board lists your occupation as that of assistant district manager, with no other designation. Are you employed by some utility company?

A. Metropolitan Insurance Company.

Q. Metropolitan Life Insurance?

A. That is right.

Q. I am not familiar with the workings of a life insurance company. What is a district manager? Is that the man who handles policies?

A. Has charge of sales promotion, charge of the agents, office staff.

Q. Where is your branch?

A. 1 DeKalb Avenue.

Q. Is that the main Brooklyn office?

A. No, we have twenty-three offices in Brooklyn.

Q. And that is the district branch office the same as any of the other twenty-three offices?

A. That is right.

Q. Does the assistant district manager have charge of the various representatives of the company who sell life insurance?

A. He has charge of anywhere between ten and twelve agents.

Q. And those are agents who go out on the field, I take it, [fol. 689] and solicit business for the company?

A. That is right, also service previous accounts, collect accounts.

Q. Collect premiums?

A. That is right.

Q. And help the client in getting proper protection for his money etc., etc.?

A. Right.

Q. Do the men under your supervision come in contact with clients in the Brownsville-East New York section of Brooklyn?

A. You see, the men on my staff, in fact, for that matter, all men of this territory have State license. They can sell insurance anywhere in the State of New York, but the rule we confine ourselves to a particular territory. Our territory runs as far as Ralph Avenue, Brooklyn; from Nosstrand to Ralph.

Q. Do you go out in the field in your work at all?

A. I do.

Q. And do you cover other territories beside the—

A. Occasionally, not as a rule. Occasionally when a man has a case off our territory and he needs assistance, I will go out and help him close a case.

Q. Do you have any business contacts, directly or indirectly in that Brownsville-East New York area of Brooklyn?

A. I have had in the past. I have been on the job for eighteen years now and then.

Q. Do you maintain any contact with people there as a general practice?

A. No, sir.

Q. People in that district?

A. No.

Q. Do you know whether you had any contact out there [fol. 690] as recently as four years ago?

A. No. I lived out there about twenty years ago.

Q. Did you live in the East New York section?

A. That is right.

Q. Have you followed the O'Dwyer investigation with any degree of interest?

A. No.

Q. Have you any contacts now in that East New York neighborhood?

A. None at all, with the exception that I am somewhat active in the Scout movement. That is the Sunrise District and they cover part of East New York section.

Q. So one of your outside activities is Boy Scout work?

A. That is right.

Q. In an official capacity, is it?

A. As an assistant Scout master.

Q. In a troop in connection with some church or social activity?

A. It is in a school house we have all our meetings.

Q. And the one in charge of the troop is a Scout master, and you are assistant to him?

A. That is right.

Q. Take the boys out on hikes?

By the Court:

Q. Is that the school corner of Bedford Avenue?

A. No, the school is East New York and Rockaway.

Q. That is a new school?

A. I really don't know how old the school is.

By Mr. Turkus:

[fol. 691] Q. The children in the troop are all children that live in that vicinity, that is, in East New York area?

A. Yes, most of them are. You see, my particular case, my boy is in that troop and I do not live in that area, but due to my boy I joined that troop.

By the Court:

Q. That is a high school, isn't it?

A. No, it is a public school.

Q. Junior high?

A. It probably is a junior high.

Q. That is a long distance from where you live?

A. Yes.

Q. You are in the Holy Cross section? You are just east of the cemetery?

A. That is correct.

Q. In fact, right up there at Church Avenue and East New York Avenue there is a monument place, isn't there?

A. That is right.

By Mr. Turkus:

Q. I do not want to unduly pry into your personal life.

A. You can go right ahead.

Q. You will understand what our purpose is?

A. I understand.

Q. I cannot gather the significance of the fact that you live out in the Holy Cross neighborhood and then you go out to East New York because your boy is in a troop.

A. I will explain that. I will make it clear. A friend of mine is quite active in the Scout movement out there, and his boy is in the same troop, and that is how he induced [fol. 692] me to bring my boy out to that particular troop, and that is how I became active in that troop.

Q. Then I take it that you and the Scout master are particularly good friends and he interested you in bringing your son out to that troop, and that is how you got interested in the Boy Scout movement.

A. That is right.

Q. Have you been going out there for the last number of years?

A. No, it is less than a year.

Q. Have you any business or social contact with people who are connected either directly or indirectly in the garment district in Manhattan?

A. No, sir.

Q. The manufacture of men's clothing?

A. No, sir.

Q. Or ladies' clothing, of any kind, nature or description?

A. No.

Q. Do you know any person directly or indirectly who has some affiliation or connection with clothing truckers?

A. No, sir.

Q. Have you been engaged in this position as assistant district manager for a number of years?

A. Seven years.

Q. And prior to that what was your business?

A. An agent, also with the company.

Q. Other than insurance, have you been in any other line of business?

A. Yes, prior to coming to the insurance business I was a manager for the United Cigar Stores.

Q. Would that be in charge of a particular store?

A. That is right.

[fol. 693] Q. In what locality were the stores?

A. Stores were located in the lower part of Manhattan, Canal Street, 14th Street.

The Court: What stores?

Mr. Turkus: United Cigar Stores.

Q. Were there any in proximity to Fifth Avenue in Manhattan?

A. Well, I worked in numerous stores in Manhattan, Fifth Avenue, yes, at one time in the Flatiron.

Q. In the Flatiron building?

A. That is probably twenty-four or twenty-five years ago.

Q. Do you know any people in the Flatiron building now?

A. No.

Q. Who maintain offices there?

A. No.

Q. You say it is many years ago since you had a job that kept you in that Flatiron building?

A. That is about twenty-four or twenty-five years ago.

Q. Are you familiar with the layout of the Flatiron building?

A. Yes.

Q. With the entrances that go into the building?

A. Yes.

Q. In connection with the Flatiron building did you ever hear the name of Lepke?

A. No, sir.

Q. Mr. Oliver, have you heretofore served as a juror in any type of case?

A. No, sir.

Q. Not even a civil case?

A. No, sir.

Q. I take it you have heard sufficient questions put to [fol. 694] jurors about the obligation of the juror to take the law from the Judge?

A. Yes, sir.

Q. If accepted as a juror, will you take the law in every aspect, in every detail, from the presiding judge?

A. Yes, sir.

Q. Since you received your notice of prospective service as a juror in the case, did anybody speak to you about the case?

A. No, sir.

Q. Did you have any discussions with anyone in connection with the merits of the case?

A. No, sir, I just talked with my family and in the office that I was subpoenaed as a juror.

Q. That was, of course, merely in relation to your prospective service as a juror?

A. Right.

Q. Does the Scout work bring you out to East New York about once a week?

A. Yes.

Q. They meet once a week.

By the Court:

Q. Have you lived out there?

A. In East New York, about twenty years ago.

Q. Where did you live?

A. Ashford Street and Sutter.

By Mr. Turkus:

Q. What street did you live on?

A. 432 Ashford Street.

Q. How near to Bradford and Sutter is that?

A. Oh—

By the Court:

Q. Ashford runs from Etna, doesn't it?

A. Yes.

Q. South?

A. That is right. It is probably about—

[fol. 695] Q. Around the Snake Hill district?

A. It is probably about fourteen or fifteen blocks.

By Mr. Turkus:

Q. You are familiar with Sutter Avenue and the surrounding locale there, aren't you?

A. Somewhat.

Q. With Van Sinderen Avenue and Livonia?

A. Yes.

Q. Where that railroad bridge and cut is?

A. That is right.

Q. And you are familiar with Linton Park near Blake and Sutter? There is a park called Linton?

A. Where they have a swimming pool in there?

Q. This is a small park.

A. No, I am not familiar with that park. I know there is a park over on Blake and New Jersey, or one of those.

Q. That is——

A. Betsy Ross Park.

By the Court:

Q. Are you familiar with that particular section where that school is?

A. Yes.

Q. Are you familiar with Saratoga and Livonia; that is about five blocks away?

A. Yes.

Q. Do you know the cigar and candy store at the corner?

A. Not to that extent.

Q. Rose Gold's.

By Mr. Turkus:

Q. Are you familiar with the territory around Sackman and Livonia?

A. Well, I am familiar with all that part of East New [fol. 696] York because I live there a few years.

Q. And of course going into that district now about once a week?

A. No, not that often. I only go as far as this particular school that I go to the Scout meeting, and that is just a couple of blocks off, or probably one block off Eastern Parkway. I don't go into Brownsville.

By the Court:

Q. Are you familiar with the Fulton Street section?

A. Yes.

Q. Fulton and Rockaway?

A. Yes, sir.

Q. Do you remember the layout? Do you know any of the stores there?

A. No.

Q. Do you ever go to any of the stores there?

A. No, sir.

Q. Do you know any of the storekeepers?

A. No, sir.

By Mr. Turkus:

Q. I think your district takes in Atlantic Avenue and Eastern Parkway too, doesn't it?

A. No, we don't go as far as that. Rockaway Avenue is our borderline.

Q. Did you ever hear the name of George Rudnick?

A. No, sir.

By the Court:

Q. By "district," you mean the 18th Assembly District?

A. No, your Honor, I mean the territory that we cover, our particular office, covers in Brooklyn.

Q. Does it cover Rockaway and Fulton?

A. Yes, sir, one side.

Q. That is Ocean Hill.

[fol. 697] By Mr. Turkus:

Q. Do you do business up in that Ocean Hill district?

A. I personally don't.

Q. I mean your men.

A. My men do business, yes.

Q. Various names must be familiar.

A. I don't know just what particular part is called Ocean Hill.

Q. You have mentioned some of the places that are called Ocean Hill. Do you know whether there is any familiarity with the name Vito Guarino or Happy Maione, Harry (Happy) Maione?

A. I saw the name in the paper.

Q. And The Dasher Abbandando?

A. Also in the newspaper.

Q. Of course, going into that area about once a week you hear discussions about the O'Dwyer investigation, don't you?

A. No, we have very little time. We get there about half past seven and we have to get the kids home by nine-thirty, so we have very little time to go into details, to discuss murders or criminal cases.

Q. As an assistant Scout master you come in contact with various of the adults interested in the troop?

A. That is right.

Q. For example, you come in contact with the parents of the various Boy Scouts?

A. Yes.

Q. And you frequently have nights when there is a parents' night?

A. That is right.

Q. They come around and watch the progress of the Scout as he goes by?

A. That is right.

[fol. 698] Q. Wearing his medals, going through the knots and the other wood carving and the other type of work that Scouts study. Hasn't there been discussion in that district by people about the O'Dwyer investigation?

A. No. In fact, I spent a few months back, I spent a fortnight hike with all the Scout leaders of the district and there was no discussion of any particular criminal investigation of any kind.

Q. Part of your job as a Scout master is to direct the youth in the right channels?

A. That is right.

Q. You do come in contact with the adults and the problems that they may have in the immediate vicinity. Do you follow me?

A. I am following you.

Q. Haven't there from time to time been discussions with those who are interested in the welfare of the Boy Scouts, particularly that troop in that East New York area of Brooklyn, as to local conditions in that section?

A. None that I remember offhand.

Q. Well, for example, aren't the various corners spoken of by parents or by others interested in the Scout troop, corners that have been a frequent hangout for certain types of individuals?

A. I have attended very few of those parents' meetings. I have devoted myself wholly to my particular troop. I believe I have attended once, and the second time was that

fortnight hike with the leaders of the troop and all the problems of the troop are talked about.

[fol. 699] Q. Well, at any rate, there are policy holders which are supervised by men under your jurisdiction who live in this Ocean Hill area that you have described?

A. Yes.

Q. I take it that you have read newspaper accounts about certain activities of people in that Ocean Hill area?

A. I have read a lot in the newspapers, stories.

Q. You have read the name of Maione and Abbandando?

A. Yes, definitely.

Q. And Pittsburgh Phil Strauss, and Martin (Bugsy) Goldstein and a lot of other characters, have you not?

A. Yes, sir.

Q. And I take it you followed those articles with some degree of interest?

A. Not necessarily.

Q. Well, some of the ones whose names I mentioned come right out of that Ocean Hill area, others come from various places in Brownsville.

A. I could not tell you where.

Mr. Climenko: I object to the question as argumentative.

The Court: It may refresh this man's memory as to whether he has ever heard neighborhood gossip which may prejudice him one way or the other.

Q. I think you may have lost track of what I was trying to find out.

(Pending question read.)

Mr. Climenko: I object to the form of the question. I do not know what the question is.

[fol. 700] The Court: This is preliminary, I take it, to the question. Frame your question.

Mr. Turkus: I have lost it twice myself.

Mr. Climenko: Then we agree on that.

Mr. Turkus: We don't agree yet.

Mr. Climenko: We don't know what the question is.

By the Court:

Q. Do you know what Mr. Turkus means is that in that Ocean Hill section there may or may not have been gossip which logically may have reached your ears concerning

matters which may cause a prejudice in this case. He wants to know if that is so.

A. No, sir.

Mr. Turkus: Have you listened to any gossip or any talk by the salesmen?

Q. Does the name Maione mean anything to you?

A. Only that I saw the name in the paper.

Q. I mean in connection with industrial insurance by the Metropolitan.

A. Maione?

Q. Maione.

A. No.

Q. You don't recall whether there are any policies in that district carried by your office for any of the Maiones?

A. No.

Q. Or if there ever have been?

A. If they are, I have no particular knowledge. It would be humanly impossible to know them all. Each office has ten to twelve thousand policy holders.

Q. That is, they are so numerous you do not carry them [fol. 701] in mind?

A. That is right.

By Mr. Turkus:

Q. You see, Mr. Oliver, what I am trying to find out is this: Having lived in this East New York district of Brooklyn and now going back frequently because of your Boy Scout work, and having in mind the guidance of youth in the proper channels, and away from certain street corners and certain influences, what I am trying to find out is, hasn't there been some natural curiosity on your part about the investigations of Judge O'Dwyer which affected certain portions of those areas in Brownsville and East New York and certain people in them?

A. No, sir, because I have been away too long from there and I have lost all personal friendly connections. I have not a friend there that I can go and spend a couple of hours with.

By the Court:

Q. Your connections center in the neighborhood of your home?

A. And the little time I spend in the Scouts; that is once a week.

Q. Do you mind telling us what other way you have of killing your time?

A. My position keeps me out approximately four to five nights a week. I go out ~~nine-thirty or ten o'clock.~~

Q. You do not have to find a place to play cards?

A. If I play cards I play right in my own home on Friday or Saturday night.

Q. Not on the corner of Nostrand Avenue and Church?

A. No, sir.

[fol. 702] By Mr. Turkus:

Q. The Judge has elicited the fact that you spend four or five nights a week in the pursuit of your business.

A. That is right.

Q. And that would be done with other of the men under your jurisdiction, in helping them either service a policy or in helping them effect a sale, I take it?

A. Not all the time do I spend the time with men in the office. I have other work, other detail work to do, such as investigations or personal cases where the agent cannot service the case and requires an assistant manager to handle a particular case, and those are the cases I have to go out in the evening to service those accounts.

Q. In other words, your duty as agent for the company would require that you go out and make certain independent investigations for the company?

A. That is right.

Q. Does your work there bring you into that Ocean Hill neighborhood too?

A. Very seldom.

Q. Or anywhere on the border of the Brownsville-East New York areas?

A. On the border, yes, as far as Rockaway Avenue.

Q. Have you ever heard the name of Joseph Rosen mentioned?

A. No, sir.

Q. The candy store proprietor?

A. With the exception that I heard it in the court-room and I saw it in the paper.

Q. Did you ever hear it mentioned before you heard it in the court-room?

A. No.

[fol. 703] Q. Did you read about the killing of Joseph Rosen when it occurred four years ago?

A. If I did, it escaped my mind.

Q. So that what is in your mind now is something that you have read rather recently; is that correct?

A. That is right.

Q. What papers do you usually read, Mr. Oliver?

A. I read the *Times*, the *News*, the *Post*, and also the *Telegram*.

Q. I take it that you have read these articles in the *Telegram*?

A. No, the *Telegram* I read very seldom. As a rule, if I cannot obtain a *Post* sometimes I even read the *Sun*.

By the Court:

Q. You do not care for the *Telegram* articles?

A. No.

Q. There was another talesman examined here who lived a few blocks away from you. He lived on New York Avenue just off of Church. Do you know him?

A. No, sir.

Q. Somebody who lived a few blocks from Harry Strauss. Did you ever hear that name?

A. No, sir.

By Mr. Turkus:

Q. In reading the name of Joseph Rosen, do you recall whether or not you read that he was the proprietor of a candy store at the time of his death?

A. That is right.

Q. And that the candy store was situated on Sutter Avenue?

A. Somewheres in East New York.

Q. And did you read in the articles the alleged motive, that is, what the alleged motive was in so far as the newspaper story was concerned?

A. Yes.

[fol. 704] Q. For his killing?

A. Yes.

Q. The part that these defendants allegedly played in the killing of Rosen?

A. Yes.

Q. What they did? I take it that those details are in your mind now as we talk it over?

A. Merely as news items.

Q. As a news item is the name of Lepke familiar?

A. Yes.

Q. And that of Gurrah?

A. Yes.

Q. The name of Weiss?

A. Yes.

Q. Capone?

A. Yes.

Q. I take it that there has been some impression formed in your mind from reading of the press accounts?

A. I would not say that.

Q. The reading of the accounts showing the alleged motive and the details of the killing left no impression at all?

A. No, sir.

Q. Did the reading of any articles in connection with the name of Lepke or Capone or Weiss leave you with an impression as to those individuals, as to who they are and who they may be?

A. I don't quite know just how you mean that.

Q. Well, when you read about a man named Lepke, you read articles about him, did that leave your mind with an impression as to the character, for example, of such an individual?

A. Well, it is merely a newspaper article that these particular individuals are charged with some particular crime.

Q. But did that leave an impression with you?

[fol. 705] A. I would not say so.

Q. Mr. Oliver, I am not trying to unduly pry, but you go into this Rockaway Avenue school?

A. Yes.

Q. You have lived in this neighborhood in the vicinity of Sutter Avenue and there has been a lot of newspaper publicity about happenings in that district.

Mr. Rosenthal: I object.

Mr. Turkus: That is only preliminary.

Q. What I am trying to ascertain from you is whether there has not been a little more interest displayed by you in the reading or in anything that may have been said in that neighborhood affecting these investigations.

Mr. Rosenthal: I object to the form of the question and to the preliminary.

The Court: Overruled.

Mr. Rosenthal: Exception.

(Pending question read.)

A. No.

Q. Well, is there anything that you may have read which has given you any bias or prejudice against the defendants in this case?

A. No, sir.

Q. Is there anything that you may have heard or read that would cause you to incline to favor the defendants in any way?

A. No, sir.

Q. Is your mind completely open as to their guilt or [fol. 706] innocence?

A. Yes, sir.

Q. And if accepted as a juror, you could discharge your duty without any impression having been formed as to guilt or innocence by anything you have read or heard?

A. Yes, sir.

Q. If during the course of the trial the names of certain individuals in the Brownsville-East New York area or the Ocean Hill area should come into the testimony, would you be embarrassed in any wise as a juror?

A. No, sir.

Q. Did your business at any time bring you into contact with any individuals on Livonia Avenue or Saratoga Avenue?

A. Some years back I wrote some personal insurance there.

Q. Was it in connection with stores in that district?

A. No, just life insurance.

Q. Were they proprietors of stores?

A. No, mostly professional people or people that were employed in New York.

Q. And by professional people do you mean—

A. Dentists, doctors.

Q. Lawyers?

A. That is right.

Q. Did you know any Assistant District Attorney on the staff of Mr. Geoghan when he was District Attorney of the county?

A. No, sir.

Q. I take it, then, that you did not know Mr. Barshay and do not know him?

A. No.

Q. Did you know Mr. Geoghan personally?

A. No.

Q. Your work of investigation for the company, does that [fol. 707] bring you in contact with police officials?

A. No.

Q. Do you ever have any occasion to visit at the office of the District Attorney of the county?

A. No.

Q. Do you conduct an independent investigation for the company?

A. That is right.

Q. Without the use of any private or other detective?

A. That is right.

By the Court:

Q. Did you say your office was down there at the Albee Building?

A. That is right.

Q. And you are the assistant?

A. Assistant in charge.

Q. Were you there when Donald Sinclair was the head?

A. Donald Sinclair was in the Dime Savings Bank.

Q. That is right where you are?

A. I am in the Albee Building.

Q. Dime Savings Bank is across the street?

A. Williamsburgh Savings Bank.

Q. He was office president of the Metropolitan?

A. He was very active in the hospital in Brooklyn.

Q. Caledonian Hospital?

A. That is right.

Q. He founded it.

A. I went to his funeral.

Q. Then you knew him?

A. Yes.

Q. A very good man?

A. Yes, sir.

Mr. Turkus: My attention has been directed to the fact it is four o'clock, your Honor, and counsel say they desire

[fol. 708] to interview their respective clients. I will be another half hour, at any rate, or longer.

Q. How long did you know Mr. Sinclair as a friend?

A. I could not call him friend——

Q. You had a very great opinion of him?

A. Yes.

Q. So much so that you went to his funeral?

A. That is right, through business, through various conferences that we had.

Q. You formed a splendid impression of him. He had good friends. I knew him many years.

The Court: It is four o'clock. We will recess until tomorrow morning at ten. Kindly do not discuss the case, gentlemen. Keep your minds open. Do not read the papers and do not listen to the radio. Have no contact with any person in connection with the case.

Defendants remanded.

(Whereupon an adjournment was taken until September 26, 1941 at 10 a. m.)

[fol. 709]

Brooklyn, N. Y., September 26, 1941.

Trial Resumed

(On direction of the Court, the Clerk calls talesmen Charles Bernhardt, No. 2645; Samuel Dronkin, No. 2748; Max Pollock, No. 2807; Sig Kramer, No. 2613; John J. Tully, No. 2601; who were seated in the jury box, subject to call for examination. All other talesmen were excused until Monday, September 29th, at 10 a. m., with the same admonition as heretofore given.)

MAX OLIVER, resuming the stand for examination as to his qualifications, was examined.

By Mr. Turkus:

Q. What is the name of the district manager of your branch?

A. Martin Labner.

Q. Wasn't he a juror in the Knadles Nitzberg case?

A. Yes, sir.

Q. That was a case where the jury was sequestered in the hotel?

A. Yes, sir.

Q. He is your immediate superior?

A. Yes, sir.

Q. I think you came to see him from time to time?

A. I saw him every day.

Q. On business, I mean, while the case was in progress?

A. No, sir, I did not.

Q. Now, did you have any discussion with the manager [fol. 710] about the Knadles Nitzberg case?

A. After the jury was discharged; he was the alternate juror.

Q. That is the case in which the mention of the names I suggested to you figured in the testimony?

A. Well, I discussed the case with him right after, sometime after he was discharged and one of these defendants' names was brought in at that particular discussion of ours.

Q. I hope you understand why I ply all these questions to you—it is incumbent upon the District Attorney not only to secure a jury fair to The People of the State, but, by the same token, which will give the defendants a fair trial. I imagine you must have watched the Knadles Nitzberg case with some interest?

A. That is right.

Q. Since your manager was on the jury?

A. Yes, sir.

Q. There was mention of the names you spoke of?

A. Yes, sir.

Q. Do you still feel you can be fair to these defendants in every respect?

A. I think so, now after I know so.

Q. Did you read any of the articles in the case of Nitzberg?

A. Just the news items; I could not say I went into the details of the articles any more than, I mean, describing the discussions I had right after he was discharged from duty, but I remember distinctly that of the defendants here—his name was brought into the discussion.

Q. There was considerable newspaper notoriety?

A. Yes, sir; there was a few more, but I could not think of their names.

[fol. 711] Q. That was earlier this year?

A. Sometime in June, I believe.

Q. If you were to serve now on a protracted trial, would that affect your business, your boss having served in June?

A. To a small extent, because there is another assistant manager in the office besides myself.

Q. In the event the trial will be lengthy, would you be handicapped in your service as a juror by the length of the trial, in view of the prior service in the Nitzberg case?

A. No, sir.

Q. Have you had discussions with anyone other than your manager, that is, the district manager, your immediate superior, and the reading in the newspaper which you told us about, have you had any discussions with reference to Judge O'Dwyer's investigations at all?

A. No, sir.

Q. Or any discussions in reference to any of the specific defendants in this or any other case?

A. No, sir.

Q. Nowhere at all with anyone?

A. No, sir.

Q. Did you at any time, while in the East New York section of Brooklyn, which you told me yesterday about, that is, about once a week, did you ever hear mentioned the names of any of these defendants in this case?

A. No, sir.

Q. In your discussions with anyone in that area?

A. No, sir.

Q. Or with any of your representatives, that is, the men who work under you, and who have business in the Ocean [fol. 712] Hill district in Brooklyn?

A. No, sir.

Q. Do you find any fault with a prosecutor who breaks a case from the inside and avails himself of the use of testimony of accomplices, that is, co-participants in a crime, and uses it against the defendants?

A. No, sir.

Q. Have you any inherent bias or prejudice against the use of accomplice testimony in the prosecution?

A. No, sir.

Q. Have you any bias either against the prosecutor or the prosecution of a case in which accomplice testimony is heard?

A. No, sir.

Q. I take it you understand what an accomplice is.

A. Yes, sir.

Q. In weighing the credibility of the testimony, emanating from accomplices, the other prospective talesmen have been asked would they weigh the character of the individual, his past life and his past history in crime, and give that consideration when they weigh his believability. Will you do the same things?

A. Yes, sir.

Q. Will you apply the test to various individuals, the test you got from experience, in weighing the believability of people when they take the stand in this case?

A. Yes, sir.

Q. Will you weigh everything in connection with what causes an individual to testify, what may motivate him to testify and every human and pertinent test you can conjure up to the effective weighing the credibility of such individual?

A. Yes, sir.

[fol. 713] Q. By the same token will you weigh the advisability of the District Attorney first getting rid of the defendants and taking care of accomplices later? Will you weigh those factors?

Mr. Climenko: As I understand it, that relates to a question of judgment; it is nothing to present to a jury.

The Court: Objection sustained.

Q. Will you use common sense and understanding in weighing every aspect of the case?

A. Yes, sir.

Q. And look over with common sense and understanding all aspects of the case like you do in your every-day affairs of life?

A. Yes, sir.

Q. Will you remember, when you are applying the tests, you are applying the tests to people in the commission of crime, not to people you meet socially and people you mingle with in your social life?

Mr. Climenko: I object.

The Court: You mean in reference to determining the issue?

Mr. Turkus: Yes.

Q. As you sit in the jury box, is there anything concerning which I have made no question which would affect your ability to sit as an impartial juror?

A. No, sir.

Q. Are you satisfied in your own mind that, from your travels in the East New York section on an average of once [fol. 714] a week, by reason of your Boy Scout activities, there is nothing you have heard and nothing in the back of your mind which you have heard through the jury service of your manager that would affect your qualifications to sit in this case?

A. No, sir.

Q. With respect to any defense that may be interposed, in the event the defendants should interpose a defense of alibi, will you take the law in respect to such defense and the law in every regard exclusively from Judge Taylor?

A. Yes, sir.

Q. Did I inquire yesterday whether or not you had prior jury experience?

A. I believe you did.

Q. I believe the answer was in the negative.

A. Yes, sir.

Q. If selected in this case, will you listen to fair argument and reasonable discussion in the jury room?

A. Yes, sir.

Q. In your business life have you problems you must iron out with other executives?

A. I did, often.

Q. Has that been going on over a period of time?

A. For about ten years.

Q. Is the name of the head of the Control Committee of the Amalgamated familiar to you at all?

A. No, sir.

Q. Did I ask you yesterday whether or not you knew Messrs. Kleinman and Price, members of the bar?

A. No, sir.

Q. Do you know Kleinman or Price, lawyers?

A. No, sir.

Q. Does your business bring you into contact with lawyers from day to day?

A. Very seldom.

Q. Do you know intimately any member of the bar who [fol. 715] specializes in the defense of criminal cases?

A. I know quite a few members of the bar, but not criminal lawyers.

Q. Are they practicing in Brooklyn?

A. Yes, sir, offices on Court Street and on Montague Street.

Q. Would it be at 185 Montague Street?

A. I believe that is the number.

Q. Who specifically in that building do you know?

A. Mr. Sparrow.

Q. On the fifth floor?

A. I have not been in his place.

Q. Is he associated with William Bernstein?

A. I could not tell you.

Q. Do you know of any other lawyers in this downtown area?

A. No, sir.

Q. Does Mr. Sparrow specialize—Question withdrawn.

Q. Is Mr. Sparrow a specialist in any type of legal work, to your knowledge?

A. No, sir, general practice; in fact, he is the gentleman that interested me in scout movements.

Q. Is he a Scout master or has he some official title?

A. He has some official title in that particular district.

Q. Is that Scout troop associated with any church?

A. No, sir, a school.

Q. Is it sponsored by any church or any society?

A. No, sir.

Q. There are troops attached to various churches and synagogues?

A. Yes, sir, even some fraternal organizations have scouts.

[fol. 716] Q. Is there any sponsor behind this particular troop?

A. No, sir.

Q. Through your scout activity, have you taken any interest in law enforcement in that area?

A. No, sir.

Q. Or any interest in any of the juvenile problems pertaining to the area of East New York?

A. No, sir.

Q. Are you brought in contact with police officials of the East New York area in regard to conditions in that district?

A. No, sir.

Q. Have you interested yourself in the problem of juvenile delinquency in and about that section?

A. Only that I met a couple of classes of the P. A. L. when the troop was formed.

Q. Have you attended any series of discussions or lectures upon the problem?

A. No, sir.

Q. Other than the work you do at night and the scout work you attend to once a week, that has been the limit, I believe, of your outside activities?

A. Yes, sir, and, of course, fraternal organizations I attend to once in two weeks.

Q. Is your state of mind such that this case is important not only to the People of the State of New York but to these defendants on trial? Do you feel this is an important case, important both to The People of the State of New York and to the defendants on trial?

A. I imagine every murder case is important to both sides.

Q. Is there any question I have asked of you that has led [fol. 717] you to favor the prosecution or aid the prosecutor?

A. No, sir. I feel it is your duty to ask these questions.

Q. I think you appreciate that in asking these questions we are endeavoring to get a jury that will be fair and impartial to both sides, although sometimes questions appear almost to be personal, but counsel cannot help that?

A. Yes, sir.

Q. If selected in the case will you endeavor conscientiously to arrive at a just decision?

A. Yes, sir.

Q. I assume that will be in consonance with justice?

A. Yes, sir.

Q. And in consonance with the evidence in the case?

A. Yes, sir.

Q. I take it you have no prejudice against any type of expert testimony, whether it be ballistic, handwriting, or otherwise?

A. No, sir.

Q. And if selected will you listen to reasonable argument from the other jurors?

A. Yes, sir.

Q. Supposing you take your place as Juror No. 2 in this case and you hear all the evidence, you listen to all the defense lawyers tell you what they think of the evidence, you listen to the prosecutor tell you his inference, and the Court charges you on the law, and you discuss the case sensibly and with reason with your fellow jurors in the sanctity of the jury room, and you come to a conclusion beyond a reasonable doubt that there are three guilty men at the [fol. 718] bar of justice, Buchalter, Weiss, and Capone, that they are guilty of murder in the first degree, the murder of Joseph Rosen—if you are satisfied beyond a reasonable doubt as to that, would you hesitate to say so?

A. No, sir.

Q. Would you have any fear or reluctance in saying so?

A. No, sir.

Q. Is there anything about your past life or present business connections that would cause you any present or future embarrassment in rendering such a verdict?

A. No, sir.

Q. It is not possible you might be bothered by any question the lawyer may ask you in this kind of examination?

A. No, sir.

Q. You said you had discussed the name of a defendant with your superior.

A. Yes, sir.

Q. At the end of the trial of a case, that was tried in Brooklyn some months ago?

A. Yes, sir.

Q. Have you discussed the defendant Buchalter, or did you at that time?

A. No, sir.

Q. Did you at any time discuss the defendant Buchalter with anybody?

A. No, sir.

Q. At no time?

A. At no time.

Q. So as you sit here now, searching your recollection, you cannot remember at any time having any conversation with any individual about Mr. Louis Buchalter?

A. That is right.

Q. You have never been personally interested in him, nor have you met those people who are interested in him, [fol. 719] whom you engaged in conversation about him?

A. That is correct.

Q. You also said that you had read articles about some defendants.

A. Yes, sir.

Q. Did some of these articles relate to Mr. Louis Buchalter?

A. Just as a news item.

Q. In what newspaper?

A. I read various papers. I read the *Times*, the *News*, the *Post*, and once in a while the *Telegram*.

Q. Did you recently read any newspaper articles about any of the defendants?

A. No, sir.

Q. In consequence of your reading any article at all, did you form an impression about any of the defendants?

A. No, sir.

Q. Have you ever sat as a juror at any time in any case?

A. No, sir.

Q. So that when Mr. Turkus and the other lawyers in the court talk about your understanding the doctrine of the presumption of innocence, it is just a form of words for you? You understand about the theory of presumption of innocence? You heard that phrase before?

A. Yes, sir.

Q. And you understand the mere filing of an indictment is nothing more than an accusation?

A. Yes, sir.

Q. It has no evidentiary value?

A. Yes, sir.

Q. Assuming the Court should charge you, as a matter of law, that the mere fact that an indictment has been filed is not to be considered by you in any manner as evidence of the commission of a crime by the defendants, would you [fol. 720] have any difficulty in following that doctrine?

A. No, sir.

Q. So that, were you to be instructed that the defendants are clothed with a presumption of innocence, you would have no difficulty in following that instruction of law?

A. No, sir.

Q. And were you to be further instructed that the defendants, one or all of them, are continuously presumed to be innocence unless they are proven guilty beyond a reasonable doubt, you would have no difficulty in following that conception of the law?

A. No, sir.

Q. None whatever?

A. No, sir.

Q. You would have no difficulty, even though the theory of reasonable doubt were explained to you and the Court should charge you—Withdrawn.

Q. Supposing the Court were to charge you, as a matter of law, that if, after hearing all of the evidence, you entertain a doubt about the guilt of a defendant or all of them, a doubt for which you could ascribe a reason, that then you were in honor bound, under oath, to return a verdict of Not Guilty, would you have any difficulty in following that instruction of law?

A. No, sir.

Q. So, if you entertained any doubt for which you could give a reason in the operation of your mind, it would be your duty, if you are in doubt—

Mr. Turkus (interrupting): I think the instructions should come from the trial justice at the proper time. It [fol. 721] is not "any doubt."

The Court: For which you can ascribe a sensible reason.

By Mr. Climenko:

Q. Assuming the Court should instruct you, as a matter of law, that it was your duty as a juror, if, after hearing all the evidence you had a doubt, and that doubt, in turn, came from a sensible reason, if you had such a doubt about any of the defendants, that it was your duty under your oath as a juror to return a verdict of Not Guilty, would you be under any hesitation in following that instruction of law?

A. No, sir.

Q. You would accept that readily?

A. Yes, sir.

Q. Along that line I would like to ask you—Mr. Turkus referred to the fact that no doubt you, in the discharge of your duty, have had occasions where it was necessary for you to discuss matters of policy with your associates.

A. Yes, sir.

Q. And discuss reasonably and intelligently, and in a civilized way, and come to an understanding with your associates?

A. Yes, sir.

Q. Be they your seniors, equals, or subordinates?

A. Yes, sir.

Q. Now, assuming that the Court should charge you that it is your duty, and the duty of every other juror, in the consideration of the case, to make a reasonable effort to agree with your co-jurors, but that you were under no obligation to surrender your individual determination un-[fol. 722] less you were really convinced by persuasions they brought to bear in support of their arguments, and that if you were not convinced, it was your duty as a juror to adhere to your own feelings and not to scare; if you were convinced, would you have any difficulty in following that instruction?

A. No, sir.

Q. In other words, you may understand that in the course of business life it may sometimes become necessary to reach an understanding with your associates, whereas in the discharge of your duty as a juror it may become necessary for you to adhere to your own determination if you are not convinced by the arguments of your fellows?

A. Yes, sir.

Q. Now, as you sit here now, have you any attitude with respect to any of the defendants which would prevent you from hearing the testimony without prejudice against them or sympathy for them?

A. None whatever.

Q. Assuming you should be instructed, as a matter of law, by the Court, that the defendants are not under any obligation to produce any proof, and assuming, as a hypothetical question, that the defendants should, in the discretion of their counsel, not call any witness, would that prejudice you against the defendants?

A. No, sir.

Q. In other words, you understand that if the Court should instruct you that the prosecution has the burden of proof and that the defendants are not under any obligation to adduce any proof, you would have no difficulty in following that instruction?

A. That is right.

Q. Are you acquainted with any member of the Police Department?

A. In my line of business we meet numerous people in the Police Department.

Q. Have you at any time formed a firm, intimate social friendship with members of the Police Department?

A. No, sir.

Q. Have you at any time discussed this case or any other case with members of the Police Departments?

A. No, sir.

Q. So your connection with the Police Department and its members is merely a casual connection, one would expect to develop in the course of your duties?

A. Yes, sir.

Q. Are you acquainted with any member of the District Attorney's staff?

A. No, sir.

Q. Supposing, after you retire to the jury room and begin the deliberation of this case, you find that after taking everything into consideration you think the defendants are probably guilty, but you have some doubt about it, a doubt for which you can ascribe a sensible reason, would you vote to acquit?

A. I certainly would.

Q. Is there any reason at all in your mind, as you consider the inquiry Mr. Turkus and all of us are propounding, on any question, or asking about your private activities, state of mind, etc., is there any reason you can think of that would prevent you from listening to the testimony in this case impartially?

A. None whatever.

[fol. 724] Q. If, after hearing all of the proof in the case, you entertain a reasonable doubt as to the guilt of any defendant, you would not hesitate to vote "Not Guilty"?

A. No, sir.

Q. You would not feel you had to justify such a verdict to anybody?

A. No, sir.

Q. You realize, don't you, that it is not only your privilege but it is your obligation as a juror, if you are selected as one, to pass on the proof without regard to the opinion of anybody who is not a member of the jury with you; is that correct?

A. Yes, sir.

Q. You as a juror, with your own eleven jurors, are the sole judges of the facts?

A. Yes, sir.

Q. Nobody else's opinion with respect to the facts can be substituted for your honest judgment of those facts?

A. Yes, sir.

Q. You understand that you exercise your sole judgment, uninfluenced by anything else other than opinions in so far as they might be persuasive to you of the other eleven jurors in the box?

A. Yes, sir.

By Mr. Barshay:

Q. Yesterday you told Mr. Turkus that you read about the alleged motive in this case.

A. Yes, sir.

Q. Did you form an opinion as to the truth or accuracy of what you read?

A. No, sir.

Q. So that no matter what you read or how long ago you read it, you are now able to say that you can dissipate what you read?

[fol. 725] A. Yes, sir.

Q. No doubt about it in your mind?

A. No, sir.

Q. And in connection with the gentleman who worked with you who was on another jury, did you discuss with him what you read, or did he discuss with you what he heard?

A. No, sir.

Q. You said that gentleman was your supervisor?

A. Yes, sir.

Q. And you had to respect his opinion before he served as a juror?

A. Yes, sir.

Q. Do you feel you have to be a "yes" man to that gentleman?

A. No, sir.

Q. Did he try to impress his opinion upon you?

A. No, sir.

Q. Since you received your notice did he go into great details?

A. Since I received my notice, no, sir; I just mentioned I was called on jury duty.

Q. He having been in a predicament like that himself, did you discuss it with him?

A. No, sir, he just told me he felt sorry for me.

Q. Is that the length of his discussion?

A. Yes, sir.

Q. And since your coming here have you discussed the matter any further with him?

A. He has asked me whether I was picked for the jury and what I am doing. And naturally I would have to discuss it, because I am here.

Q. Has he related to you any of the propositions of law that he heard?

A. No, sir.

Q. Has he related to you any facts that he may have heard [fol. 726] since your coming here?

A. No, sir.

Q. If you should be chosen as a juror and the Court shall advise you that, pending your being sworn and locked up, you do not have any discussion at all with the gentlemen, you will follow that instruction implicitly?

A. Yes, sir.

Q. And you will, should he try to again engage you in conversation about the facts——

Mr. Turkus: I object. I submit that is an improper statement of fact, "again try".

The Court: Leave out the word "again."

Q. Should he try to discuss the facts with you or give his opinion or relate to you his experience, as a guide for you, you would not pay any attention to it at all?

A. I only will not pay any attention to it, but I do not think he is the type of man who would try to influence me.

Q. I don't think that he will do it, but, in other words, you are an independent individual, of independent judgment?

A. Yes, sir.

Q. If you saw things in a different light, irrespective of supervisors or anybody else, you are going to stick to your own judgment?

A. Yes.

Mr. Turkus: I object to that, because that would cause a juror to arbitrarily hang a jury, and that is what we do not want.

Mr. Barshay: That is the second time you said that. [fol. 727] May it be understood that nobody here is trying to get a hung jury?

Mr. Turkus: The question suggested that to me, and that is the reason I made an objection.

Mr. Barshay: May we have the Court advise Mr. Turkus not to try that again? I resent any innuendo on his part that there is an effort being made here to hang any jury, or hang anybody, unless he wants to do the hanging.

The Court: Now proceed, please.

By Mr. Barshay:

Q. You know, Mr. Oliver, yesterday we did not know about the relationship between you and certain other gentlemen; you understand that?

A. Yes, sir.

Q. This morning, through means that are acceptable to me, he was able to find it out, but I have to question you along these lines. Yesterday you also said in response to Mr. Turkus that you read about the alleged part that each defendant played in this case.

A. Read what?

Q. Read the part, the alleged part, that each defendant in this case played.

A. No, sir.

Q. Did you read anything in the newspaper about what each defendant here is supposed to have done in this case?

A. Yes, all I read in the paper was that these men were charged with a particular crime, with the murder of somebody, and that they were supposed to have gone to the District Attorney's office, or something to that effect, but [fol. 728] I have not read what each defendant claims. That is a question I could not answer honestly.

Q. Maybe I have the notes wrong, but I thought I heard you say that to Mr. Turkus.

A. No, sir.

Q. Your mind is free from any details whatever?

A. Yes, sir.

Q. If the testimony should cause you to refresh your recollection, because only testimony here shall be binding, whatever you read will be dissipated from your mind?

A. That is right.

Q. So that you shall be a juror on the sworn testimony, subject to cross-examination, and on no other outside evidence?

A. That is right.

Q. So that the reputation or the character of any of the defendants here will not be in issue unless they themselves place it in issue?

A. That is right.

Q. This indictment, which alleges certain accusations, is the only thing that we are here to meet, you understand?

A. Yes, sir.

Q. You understand we do not try men or general appearance?

A. Yes, sir.

Mr. Turkus: I object. I don't understand what that means.

The Court: Objection overruled.

Q. Mr. Turkus has said he shall use accomplice testimony. You will pardon me for being repetitious, but I have to be— Assuming that a person who takes the stand admits [fol. 729] he is an accomplice, will you take into consideration when, out of his own mouth, we shall prove that on another occasion, under oath, he said he was not an accomplice, in weighing the truth or falsity of his testimony?

A. I would scrutinize it very carefully.

Q. And in passing on each witness's testimony who claims he is an accomplice, if there shall be brought out from the witness stand a demerit mark, a demerit mark against his character and past life, will you use those in weighing the truth or falsity of that person's testimony?

A. Yes, sir.

Q. The worse character he has, the less you will believe him?

A. That is right.

Q. No matter how much he swears to tell the truth?

A. Yes, sir.

Q. You will be very, very slow in acceptance of his testimony, won't you?

A. Yes, sir.

Q. If, in addition to his being an accomplice, a thief, a robber, a murderer, you shall find from the testimony here out of his own mouth that he had a motive in turning so-called State's evidence, you will watch that carefully?

A. Yes, sir.

Q. You will take into consideration the motive, the hope of reward that person has in becoming now a witness for The People?

A. Yes, sir.

Q. And if there shall come from his testimony the fact [fol. 730] that before he turned State's evidence he was in a jail and thereafter he was induced to turn State's evidence and changed his statement, you will find out whether or not the treatment given to him, to that person or that personage or that witness or that accomplice causes him to vary his testimony to suit his own hands?

A. Yes, sir.

Q. If you find he has been living in a hotel, seeing his wife around and going to bed with her and getting special food, you will take that into consideration?

A. Yes, sir.

Q. If it develops, you find that some person or persons are allowed privileges not allowed to prisoners, you will take those things into consideration?

A. Yes, sir.

Q. If it develops there are long automobile rides with a chauffeur in uniform to carry them through the City streets, you will take that into consideration?

A. Yes, sir.

Q. And if you find that they are allowed to play baseball in Long Island, you will take that into consideration?

A. Yes, sir.

Q. So all of these inducements in favor of these persons who are in prison and a person who is going to testify for them, you will consider whether or not they will tend to make that man a liar or an honest man?

A. Yes, sir.

Q. And if, in addition to all that, you find that the particular person or persons are absolutely free of any charge of crime pending against them, you will take those things into consideration?

A. Yes, sir.

[fol. 731] Q. Mr. Turkus has said that you must not consider punishment. That is the law. But you know, if a verdict in this case should be that of guilty, the law is a mandatory one and the electric chair is the punishment. Will you, together with that, take into consideration the testimony of the type of people—I will withdraw the question.

Q. Would it cause you to weigh with great care the testimony of these people whom I just described—I do not want to repeat again what I just said—when it comes to deter-

mine the guilt or innocence of any of the defendants, keeping in mind just as well the law as fixed for the penalty, as a result of your verdict?

A. Yes, sir.

Q. These same rules you will apply to accomplices, I take it you will apply to all people who take the stand, no matter what the purpose of their testimony is?

A. Yes, sir.

[fol. 732] Q. And if someone takes the stand and says, "So and so made admissions to me five years or four years or three years later," will you take into consideration that on another occasion, under oath—under oath—represented by eminent counsel, the same individual denied any knowledge in the matter? Will you take that into consideration?

Mr. Turkus: I object, it is not legitimate to state evidence on another trial and ask the talesman about it.

The Court: Objection sustained.

Q. Mr. Turkus has said something about breaking a case from the inside. Do you accept that as truth already?

A. No, sir.

Q. You will wait until you hear from the witness stand whether that is the fact?

A. That is right.

Mr. Turkus: You don't contend Mr. Geoghan broke the case, do you?

Mr. Cuff: I object to that statement as wholly improper and having nothing to do with the issue presented by the question.

The Court: I do not understand the question to mean that.

Mr. Barshay: It had nothing to do with it. It was a gratuitous slap at a fine gentleman, a gentleman on whose staff Mr. Turkus made every effort to get.

[fol. 733] Mr. Turkus: Let us have an understanding that Mr. Barshay was an assistant in Mr. Geoghan's office when this matter happened.

Mr. Rosenthal: On behalf of the defendant Capone, not having any title or connection either with the present or any District Attorney or other office, I am strenuously objecting to this argument upon the ground it is prejudicial to my defendant. I ask your Honor to admonish Mr. Turkus to leave entities and individuals out of this trial. We are

here trying a case of murder, my defendant being charged with participating in the murder of one Joseph Rosen in 1936. I now ask your Honor to admonish Mr. Turkus to leave entities and individuals out of this trial.

The Court: It is so much gossip. Supposing we proceed with the examination.

Mr. Rosenthal: Your Honor, I except to that ruling.

By Mr. Barshay:

Q. You know now that it has nothing to do with Mr. Geoghan or anybody else?

A. That is right.

Q. I am leading to another point, about breaking the case from the inside. I said you do not accept that as the truth because Mr. Turkus said so?

A. No, sir.

Q. We are not interested about its being broken. The point is, you will not consider that in determining the guilt or innocence of any of the defendants?

A. No, sir.

[fol. 734] Q. If it shall develop that this so-called accomplice, whom I take it he will use for the purpose of substantiating from the witness stand a statement from the floor that the case was broken from the inside, if it shall develop that for months the man denied any knowledge of this case and only when it was proven to him that he himself would be a defendant in a murder case did he say anything at all, will you take those things into consideration?

Mr. Turkus: I object. That was covered by the previous question.

The Court: The question has to apply to evidence. It is not permissible. It is presupposing.

Q. Whatever is said here from the floor by either Mr. Turkus or any other Assistant District Attorney, or by any lawyer, is not evidence in the case.

A. Of course not.

Q. The evidence comes from where you are sitting, after a man has raised his hand and sworn to tell the truth.

A. Yes, sir.

Q. And it will be for you to decide whether or not it is the truth?

A. Yes, sir.

Q. Now, is your mind presently free from any prejudice or bias of any kind, nature, or description?

A. Yes, sir.

Q. Nothing shall deter you from rendering an independent judgment?

A. Nothing.

Q. You shall give our client, Mr. Buchalter, individual [fol. 735] consideration and individual judgment?

A. Yes, sir.

Q. You shall not use the evidence that is given here in this case that has no application to him, unless his Honor charges that you may?

A. Yes, sir.

Q. If his Honor should charge you during the course of the trial that some evidence given by the witness is not binding upon Buchalter, you shall never use it?

A. No, sir.

Q. Even if the evidence is given at the beginning of the trial, and the trial takes a long time, you will retain that in your mind, that no evidence not binding upon Buchalter shall ever be used or permitted to be used by others?

A. Yes, sir.

Q. You will reason with the jurors on that proposition of law?

A. Yes, sir.

Q. You know it is not here "all or nothing"?

A. Yes, sir.

Q. I mean with respect to judgment—you know what I mean when I say "all or nothing"? You can render one verdict one way and another one one way and another one another way?

A. That is the way I understand the question.

Q. Can Mr. Buchalter entrust his legal rights for determination, honestly and fairly?

A. Yes, sir.

Q. And with courage, if you find a reasonable doubt from the evidence against him—you will acquit him?

A. Yes, sir.

Q. At no time shall you demand of him that he shall prove or furnish proof of his innocence?

A. No, sir.

By Mr. Cuff:

[fol. 736] Q. Mr. Turkus asked you if your state of mind was such that you might believe that a man of bad character tells the truth.

A. I don't get your question.

Q. I think Mr. Turkus asked you if your state of mind was such that you could believe a man of bad character could tell the truth.

A. Sometimes, yes, sir.

Q. I want to ask you if your state of mind be such that you could also believe that a man of bad character is more apt to tell a lie than a man of good character?

A. Yes, sir.

Q. And you would take that into consideration in discharging your duty, with the rest of your fellow jurors, if selected, in weighing the credibility and believability of any such witness?

A. Yes, sir.

Q. And the worse his character is, you appreciate, is your state of mind such that you believe the more apt he is to falsify?

A. Yes, sir.

Q. When you discussed this other trial with your superior in your office, was it after conviction at the trial?

A. Yes, sir.

Q. After all the evidence had been taken?

A. When he was discharged from his service.

Q. He was discharged after the evidence was closed?

A. Yes, sir.

Q. Your discussion then dealt with the facts developed on that trial?

A. Yes, sir.

Q. You had respect for that man's opinion, I believe you [fol. 737] said?

A. Yes, sir.

Q. Well, now, did that discussion bring back to your mind things which you had read in the newspaper, your favorite newspaper, you told us about?

A. Not necessarily.

Q. You are the man whose mind we are inquiring into. What I want to know is whether or not all through the intimate discussion you had with your manager, after he had listened on the trial to which you refer, brought back

and refreshed in your mind things which you had read in the newspaper prior thereto.

A. I could not really give you a definite answer, because the articles I read about were so vague to me; it was just a general discussion.

Q. You took as truthful what you read in your favorite newspaper?

A. No.

Q. When you read items in your newspaper about which you know nothing, do you accept them as truth?

A. No, sir.

Q. Don't you accept anything you read in the newspaper as the truth?

A. Some of it I do.

Q. What I am trying to find out is, when you possibly cannot know the facts yourself or ascertain them, whether what you read in the newspaper is true, you generally accept what you read in the newspaper, don't you?

A. If I am interested in a particular item I try to check it up a little further.

Q. You mean to say you check up what you read?

A. The particular item I am interested in.

[fel. 738] Q. Well, now, I think you said you read the *Herald-Tribune* or the *Times* or the *Telegram*.

A. The *Post* and the *News*, the *Telegram* now and then.

Q. You did not try to check up any of the articles you read about this?

A. No, sir.

Q. Or about the other trial, which you discussed with your manager?

A. No, sir.

Q. How many times would you say you discussed it with your manager?

A. Probably twice.

Q. That is, a rather long and pointed discussion? Did he refer to the case on which he sat?

A. Not very long.

Q. Was it a pointed discussion of the facts of the case on which he sat?

A. Yes, sir.

Q. And that made a deep impression, didn't it?

A. No, sir.

Q. You are in some doubt about it; it took you some time to answer.

A. I want to search my mind before I answer a question like that.

The Court: Mr. Cuff, don't you think the Metropolitan and the Prudential, in making selections of branch managers downtown are apt to hit on a man with a rather high I. Q.?

Mr. Cuff: I think——

The Court: I think the talesman is trying to make it clear to you that he does not follow up what he reads in the newspaper.

Mr. Cuff: I am quite appreciative of what the talesman [fol. 739] has said, but I am trying to find his state of mind about a particular matter that has been brought out this morning.

The Court: The higher we go on intellectual plane, the less prejudicial we find people to be.

Mr. Cuff: I don't think they are any different than in any other walk of life.

The Court: I would rather trust your judgment today than fifty years ago, because you have gone pretty high.

Q. You appreciate I am just trying to find out what impression has been made on your mind by these discussions.

A. I find no fault with you.

Q. It is my duty to see that we get trial jurors open-minded, who are properly able to, and courageous enough to render a verdict which the evidence justifies under the rules of law.

A. Yes, sir.

Q. Something has been said about reasonable doubt being a sensible doubt. That is true, but I wonder if you appreciate that that reasonable doubt is something that must be based upon the evidence given from the witness stand or some letter in evidence?

A. Yes, sir.

Q. And if that is the basis for any doubt, if you find that after considering the evidence and listening fairly to the reasonable arguments of the jurors, based upon the evidence in the case, that you have a reasonable doubt as to the guilt or innocence of any one or all of these three defendants, [fol. 740] will you have the courage to adhere to that de-

termination unless and until you are convinced to the contrary, despite the fact that everybody else may oppose you?

A. Yes, sir.

Q. If his Honor should charge you that it is your solemn duty to adhere to a reasonable doubt so long as you are not convinced it is unreasonable, will you do that?

A. Yes, sir.

Q. Now, supposing, in the judgment of counsel, one or more of these defendants did not take the witness stand to testify in this case, would you, consciously or subconsciously, draw an unfavorable inference against that defendant or defendants?

A. No, sir.

Q. Of course, when you told Mr. Turkus you believed in the enforcement of the Penal Law, you did not know, did you, that under that law no unfavorable inference can be drawn from the failure of a defendant to take the stand?

A. Yes, sir.

Q. And you would have no hesitation in following that rule of law when his Honor will charge it to you?

A. No, sir.

Q. I want to know this: Whether you can assure me that that discussion that you had with your superior after the trial of the Blitzberg case last June left no unfavorable impression in your mind against any one of these defendants—is that right?

A. That is correct.

Q. Do you say now that is true as to the defendants you mentioned, without mentioning the name?

A. That is right.

By Mr. Rosenthal:

[fol. 741] Q. I represent, with others, the defendant Capone. You have been questioned by the attorneys for the other two defendants.

A. Yes.

Q. Now, Mr. Turkus asked you a question as to whether or not you had any prejudice against the District Attorney breaking the case from the inside.

A. Yes, sir.

Q. Do you realize it is your duty to find out whether or not this case was ever broken—you realize that?

A. Yes, sir.

Q. If you are accepted as a juror, merely because he says the case is broken, it does not mean it is broken; do you realize that?

A. Yes, sir.

Q. You realize when it comes to the question as to whether it is broken, whether the right parties are charged with the crime, that you are going to take what you believe to be the truth as you hear it from the stand and not what you hear the Assistant District Attorney or the lawyers for the defense say?

A. That is right.

Q. Now I ask you these questions in view of the fact that you have mentioned today that your manager has been on a jury in this court. Did you, in the course of your discussion with your superior, enter into entities of the individuals who testified, the witnesses who were called in that particular case?

A. Yes, sir, a few witnesses were discussed.

Q. Did you in your conversation with him or he with you comment at all about the particular witness, without reference [fol. 742] once to their names, that were called by The People in that particular case?

A. I don't quite get that.

Q. You say you discussed with your manager certain witnesses who had been produced by The People.

A. Pardon me, no discussion; he just told me the story.

Q. And in telling you the story did he mention the name of any particular individuals who had actually testified in the case itself?

A. He mentioned some, but I would not remember them.

Q. In mentioning these persons, did he in any wise intimate to you his belief or disbelief, or what they had testified to on the stand? Is that question clear?

A. Yes. No, I don't really remember so as I could give you a definite answer one way or the other.

Q. Of course, we are restricted from indulging in personalities, so the general question is put to you, and that is the way I am putting it, in this way—I will repeat it again: In discussing the names of individuals, irrespective of what names they are, did he indicate in his discussion with you his belief or disbelief of what those persons had said on the stand?

A. I really don't remember.

Q. You don't remember whether he did or did not?

A. No, sir.

Q. Did he in any wise, without mentioning the names, indicate in his discussion with you any bias or prejudice against any of the defendants who are now on trial?

A. Yes, sir.

[fol. 743] Q. He indicated in his discussion with you that he was prejudiced against one or more of the defendants now on trial?

A. Yes, sir.

Q. In that discussion that was had as between you and him, did he indicate to you or cause evidence prejudicial against that particular individual or individuals?

A. Or cause?

Q. Don't let us go into details. Did he?

A. It cannot be answered unless I am permitted to say a couple of words.

Q. Of course, we don't want to have any argument. I will put it in a different way. We do not want to have any grounds, as to the other defendants, for a mistrial or otherwise. I will put it in a manner in which you can answer it without going into a discussion. In discussing this prejudice or bias that he had, did he in any way inform you of the reason that he—your manager—had for this expression of bias?

A. Did he have any reason?

Q. Did he give you his reason in plain English? That is simple.

A. Yes, sir.

Q. Now, having given you his reason for his expression of bias or prejudice—

Question withdrawn.

Q. You have answered both Mr. Barshay and Mr. Cuff that the reasoning of your superior was always treated by you with high regard.

A. Yes, sir.

Q. Was the reasoning that he used in this particular instance given that same high regard or respect by you as his [fol. 744] reasoning on other matters?

A. No, sir.

Q. So that, in so far as this particular matter is concerned, you did not treat it with the high regard you treated his other expressions of opinion?

A. That is right.

Q. In any event, did his expression of prejudice or bias to any extent influence you at the time?

A. No.

Q. It did not in any wise alter your open frame of mind as to any of the individuals on trial; am I correct?

A. That is not clear.

Q. I say that it in no wise altered your open frame of mind as to any defendants who are on trial here?

A. That is right.

Q. Assuming that in this trial, even though you may have forgotten now at this particular time of any particular witness whom he has spoken to you about, if that particular witness was called to the stand and you then recalled that that is one of the individuals he spoke to you about, would the impression that he had gained on that particular witness in any wise influence you in determining what weight you would give to that witness's testimony in this trial?

A. No, sir.

Q. You are positive?

A. Positive.

Q. Now, on the question of the defendant Capone. Do you feel that a mere admission on the part of an individual that he knows another individual, in and of itself creates a question as to his guilt—the mere knowledge of the person?

A. No, sir.

Q. Do you feel that merely because a defendant is a defendant in a trial and he were to take the stand and say under oath, having no prior criminal record, that he brands the prosecution's witness as a liar—that simply because he is a defendant you would disbelieve him?

A. No, sir.

Q. Of course you would take into consideration what interest he has in making the statement—you have a right to do that; and you also will listen to his story, will you not, on the stand, to judge for yourself by his answers, his manner of answering, and all the connecting circumstances, whether he is telling you the truth or not?

A. Yes, sir.

Q. And if you believe he is telling you the truth, you would not hesitate in showing that belief by a verdict which you would render?

A. That is right.

Q. Each of these defendants you have here, I suppose, as you are sitting in the court-room, although they are on trial together, are entitled to a separate trial.

A. Yes, sir.

Q. In other words, you will hear the evidence once, but there are three separate trials for your judgment.

A. Yes, sir.

Q. The evidence in so far as it affects any particular individual, under the law as given to you by the Court, is the only evidence that you will apply to that particular individual in the jury room?

A. Yes, sir.

Q. In determining whether he is guilty or innocent of a particular crime?

A. Yes, sir.

Q. You won't permit yourself to be swayed by saying, "Well, there are certain parts of the evidence which are [fol. 746] applicable to one of the defendants, and even though the Court tells me under the law I cannot use it, well, it is joined in here some way, and I will use it against the other defendants?

A. No, sir.

Q. The mere fact of what you may have read—and there is no use of our hiding that fact now—you know there has been a great deal of publicity given to this case?

A. Yes, sir.

Q. You know that from the very panel that has come here and shown papers which they have read?

A. Yes, sir.

Q. But that does not mean in your mind you would be afraid to come in here for fear of maybe some public opinion or sentiment, if you were not convinced of the guilt of the man, and say he was guilty?

A. Of course not.

Q. You realize the character of the defendants is the only thing in issue in a criminal case when he makes it an issue—in other words, if I do not explain it so that you can understand it, just tell me and I will put it in a different form, so you may understand me. The question of the character of these individuals is not what you are trying here; you understand that?

A. Yes, sir.

Q. You are trying them because The People of the State allege, through indictments, that they were one of the participants in the murder of Joseph Rosen in 1936.

A. Yes, sir.

Q. That is all you are trying?

A. Yes, sir.

Q. The mere fact that one of these defendants, according to his attorney, is or has been serving a long term in prison, [fol. 747] would not in any wise affect your judgment because the co-defendant represented by me happens to be joined in the indictment with him?

A. No, sir.

Q. In fact, it would not affect your judgment in so far as the particular issue involved is concerned at all?

A. No, sir.

Q. You know, or do you know that irrespective of the number of people who come on the witness stand here, who are admittedly accomplices, that no man can be convicted on the uncorroborated statement of an accomplice, whether it be one or many?

A. Yes, sir.

Q. Assuming the Judge were to charge you as to the law in this case and in any case in this State that before you could convict a man of a crime there must be other evidence outside of that of the one or many accomplices, independent in its source, tending to connect the defendant with the crime. Do you find any fault with that?

A. No, sir.

Q. Assuming the Judge were to charge you that there are two types of accomplices, one where the Judge says to you, "He is an accomplice as a matter of law," in which event you, as a jurymen, must accept that and treat him as such—

A. Yes, sir.

Q. The other is that you, the jurymen, from the facts and circumstances, may determine as a question of fact whether he is an accomplice. Is that clear?

A. Yes, sir.

Q. Would you, when you went in the jury room, simply because of the fact the District Attorney were to say to you, [fol. 748] "He is not an accomplice," take that for granted, or would you determine first, before you pass upon independent evidence, whether that man in your opinion actually is

an accomplice, even though the Judge left it to you, rather than take it upon himself as a question of law?

A. I would decide that.

Q. And if you once decided he was an accomplice, in your jury room, would you then, apply the same rules the Court laid down to you that were necessary for the corroboration of an accomplice?

A. Yes, sir.

Q. On the question of fact tending to corroborate an accomplice's part in the case, The People may rely upon one or more witnesses who allege that one or more of these defendants has supposedly admitted to this particular individual his participation in the crime—do I make that statement clear?

A. It is a little bit involved.

Q. I will put it in easier terms. If it should develop in this trial that the so-called independent evidence which the People rely upon to corroborate the accomplice is a supposed admission made by one or more of the defendants to some other person, would you, in passing upon what probative force or value you would give to that admission, firstly investigate the source from which it comes?

A. Yes, sir.

Q. If, in investigating the source from which it comes, you find an individual who alleges that this admission was made to him, a self-confessed murderer of one or more men [fol. 749] for which he has never been indicted up to the present time, and one who has committed various sorts of crimes—

Mr. Turkus: I think this type of questioning is objectionable.

Mr. Rosenthal: Let me finish the question.

Q. (continuing) —and has committed perjury on a number of occasions, and various other crimes, would you, in determining the weight you will give to that witness, take all of these facts into consideration?

A. Yes, sir.

Q. If, after hearing from this witness's mouth either on direct or under cross-examination the facts which I have just related to you, if you feel that a man of that type is not telling the truth, would you hesitate to disregard what he says?

A. No, sir.

Q. Now, that test you will apply to any and all witnesses that may be called, irrespective of whether they are called by the prosecution or the defense?

A. Yes, sir.

Q. And in going into the jury room you are not going to allow your common sense to be left outside?

A. No, sir.

Q. In other words, if a man came to you who bore the highest reputation and made some representation to you, you would be quicker or more apt to believe him than some man whom you knew as a crook or a thief and was unworthy of belief all his life came to you and told you a story?

A. Yes.

[fol. 750] Q. That is the type of common sense you will use in the jury room when you determine what weight you are to give a witness?

A. Yes, sir.

Q. From your experience in your ordinary business life, and your association with ordinary human beings?

A. Yes, sir.

Q. Now, there is no way that any defendant can ferret out through his lawyer or estimate the mind of any prospective jurymen except by questioning jurymen, and then leave it to his integrity to say that he, the jurymen, can fairly and truly determine the issue as between the State and the defendant without fear or bias.

A. Yes, sir.

Q. Now, you have admitted conversations with your boss and the reading of newspapers and other things.

A. Yes, sir.

Q. Various lawyers have asked you questions as to whether or not an impression has been created of any character that would be detrimental to either side or any of the defendants. Now, the physical question which I will ask you is, you in the final analysis being the man to decide, is there anything in your mind now, whether it has been reached by the questioning of the jurors, that would prevent you from acting as a fair and impartial jurymen, doing justice between The People and the defendants, either one way or the other?

A. No, sir.

Mr. Rosenthal: No challenge for cause on the part of any of the defendants.

Mr. Turkus: Challenge peremptorily.

[fol. 751] ALBERT ROSENTHAL, No. 2735, residing at 1521 48th street, Brooklyn, New York, was examined as to his qualifications.

By Mr. Turkus:

Q. You very frankly stated to me that you were a fraternal brother of Mr. Wegman, who represents the defendant Buchalter?

A. Yes, sir.

Q. You and Mr. Wegman have talked at various times while you were waiting to be called to the box?

A. Yes, sir.

Q. I believe at the suggestion of all of us Mr. Wegman approached Judge Taylor to have you excused on that ground?

A. Yes, sir.

Q. And Judge Taylor reserved decision until you actually were brought into the box. Under the circumstances, I think, and I know Mr. Wegman joins, you should be excused.

The Court: What relationship?

Mr. Turkus: A fraternity brother. There is nothing closer than a fraternity brother except a natural brother.

Q. I think you went to Manual Training High School?

A. No, sir, Erasmus Hall.

Q. Mr. Wegman went to Manual?

A. I believe so.

Q. You belong to the same high school fraternity?

A. Yes, sir.

Q. You have known each other throughout the years since then?

A. I don't recall the last time I saw him. It is quite a long time ago.

[fol. 752] By the Court:

Q. How many years is it?

A. I should judge maybe twelve years ago.

Q. How old are you now?

A. Thirty-five.

By Mr. Turkus:

Q. For a long time, I take it, after graduation you continued to be interested in fraternities?

A. Yes, sir.

Q. And then it died out?

A. Yes, sir.

Q. Your marriage took away your boyhood activities?

A. Yes, sir.

Q. And what is the fraternity?

A. Sigma Alpha Phi.

Q. How many members?

A. I would not remember.

Mr. Wegman: If he said four hundred, I think he would be exaggerating.

The Court: You might as well challenge the man because he and counsel are both members of the American Legion.

Mr. Turkus: That is not consistent at all in my mind.

The Court: Even members of the same lodge know one another very well. That would not disqualify him as a matter of law. You will have to question the witness.

By Mr. Turkus:

Q. Some of the questions I put to you of necessity must be pointed. I think you will understand the reason. It is done without any intent of being offensive or to give you any embarrassment. There is a close relationship between [fol. 753] fraternity brothers, isn't there?

A. There is presumed to be.

Q. Well, was there between you and Mr. Wegman?

A. Yes, sir, I have a very high regard for Mr. Wegman. I think he is a little older than I.

Q. I take it you have a high regard for him? You have watched with a great deal of pleasure and interest his success in his chosen profession?

A. Naturally.

Q. You have seen him graduate from high school, a student in law school, and then become a member of the bar of the State?

A. Yes, sir.

Q. Then, from a member of the bar of the State, you have seen his talents appreciated and recognized, and he received the office of Assistant United States Attorney for the Eastern District, in Brooklyn?

A. I know that.

Q. More than that, you saw him progress and go all the way to Washington as Assistant United States Attorney?

A. Yes, sir.

Q. You have some degree of affection for him, and regard?

A. Yes, sir.

Q. And as a matter of fact, it was to such an extent that you thought it would be proper to apprise the District Attorney of it?

A. Yes, sir.

Q. And it was a mutual suggestion that application be made to the Judge to excuse you from jury service in a case in which Mr. Wegman appears as counsel?

A. Yes, sir.

[fol. 754] Q. Obviously it would be embarrassing to you to sit in on the case, wouldn't it?

A. I don't know whether it would be actually embarrassing or not.

Q. Well, at least to the extent that you would rather not serve?

A. I would rather not serve.

Q. For example, if there was an argument made to the jury and an inference drawn, because of your great interest in Mr. Wegman and your admiration for him, of necessity you would pay greater respect to the argument emanating from him than from another lawyer?

A. All counsel here are very eminent, and I don't think that would be so.

Q. If it came to a disagreement between Mr. Wegman and another lawyer on the meaning of certain evidence, wouldn't you naturally be inclined to look at it his way?

A. I don't know.

Q. Then may I ask you what was your reluctance in being in the case?

A. I thought, as a matter of course, knowing one of defense counsel so well, I would be excused, and I thought it proper to let you know about it.

By the Court:

Q. It was done in the hope that would let you out of jury service?

A. It was not in any hope; I know my obligation to serve.

Q. You would like to avoid it?

A. Yes, but not at the expense of doing what I am supposed to do.

[fol. 755] By Mr. Turkus:

Q. You sat in the box when Mr. Herrick was in your present seat, Mr. Herrick, the insurance broker?

A. Yes, sir.

[fol. 756] Q. And you remember when he was asked questions by counsel and he said he knew me from meeting me in a restaurant?

A. Yes, sir.

Q. And he had watched my career?

A. Yes, sir.

Q. Is there anything the Judge said to Mr. Herrick that may bother you in giving us answers on the stand?

A. I don't think so.

The Court: If both sides have made up their minds and agreed on excusing this talesman, it is perfectly obvious the Judge's hands are tied. Unfortunately, I made similar comments a few days ago and a newspaper headline writer sought to make his day's story by putting the Judge in the unfortunate position, by saying that both sides were "ganging up" on him. The Judge said nothing of the kind; it was a misquotation which the Court will take notice of if it occurs again. I shall not repeat anything about both sides agreeing. The Court is supposed to rule. The Court has ruled. The two of you get together and come to an agreement and assume the Court is a rubber stamp. The Court is not. Now proceed with the examination of the talesman.

(Mr. Turkus continues his examination.)

By Mr. Turkus:

Q. If it came to a close question, would you be inclined to favor Mr. Wegman?

A. I could not say now whether I would or not; I certainly [fol. 757] would not do it with intention.

Q. Might you, subconsciously?

A. I think that is a question for a psychologist; I think it is very likely that would happen.

Q. It is possible it would happen?

A. I think any relationship like that is apt to color a man's judgment without his knowing it.

Q. And, of course, having your judgment colored, there would be a variance in the quantum of proof that might ordinarily be needed?

A. It might work two ways; it might work the other way, too; I might bend over backwards.

Q. Of course, I can only deal in relative speculation, because nobody can read a man's mind. Because of your interest in him (Mr. Wegman) and your regard for him, would it vary the quantum of proof, possibly subconsciously, that might be required from the prosecution?

A. Possibly.

Q. Is it possible you might expect more proof in such a case than you would if he were not counsel, that is subconsciously?

A. I would have to be convinced some way.

Q. You have a genuine and an honest doubt as to that?

A. I think that possibly my judgment may be colored.

The Court: The Court is going to ask that no more leading questions be asked. This is becoming a travesty. The Court is ruling in good faith and wants an honest-to-goodness examination of this salesman, not words to be put into [fol. 758] his mouth by either side. If the salesman is disqualified, he does not need any help in order to show it. He will show it soon enough in the proper way.

By the Court:

Q. What is your business?

A. Manufacturer.

Q. You presented an application to be excused from jury duty?

A. I did not.

Q. What is your concern?

A. The Simplex Button Works, Inc.

Q. You are engaged in war work?

A. Not extensively; we do a little.

Q. You have no contracts to make buttons for soldiers' clothing?

A. No, sir, that is a different type of a button.

Q. You mean an electrical button?

A. No, sir.

Q. What are they?

A. Buttons for ladies' garments, among other things.

Q. What is your position there?

A. Up to about October of last year I was supervisor of production.

Q. What is your position there?

A. I do everything, check credit—

The Court: The Court will ask no further questions because the hostility on your part to questions of the Court is obvious.

The Witness: May I correct that impression, if I seem to have given it?

[fol. 759] The Court: The whole court-room is being upset by your attitude and the attitude of counsel. If one counsel challenges for cause, I will excuse for cause.

Mr. Turkus: Challenged on the ground of implied bias.

The Court: I will excuse him. The Court is being upset by the attitude of counsel and of the talesman. He may leave. I want no repetition of this. There will be no beating around the bush or substitute for excuses by consent.

Mr. Talley: We don't hear you. We would like to hear you.

The Court: Proceed.

FRANK LANZI, No. 2652, residing at 887 East 35th Street, Brooklyn, New York, a talesman, was examined as to his qualifications.

By Mr. Turkus:

Q. You are listed on the trestle board as living at 887 East 35th Street.

A. Yes, sir.

Q. What section is that?

A. Vandever Park.

Q. Have you lived in Brooklyn a number of years?

A. Fifteen.

Q. How many years have you lived in that section?

A. Practically the whole fifteen years.

Q. The trestle board likewise lists your profession as [fol. 760] an engineer. Are you in business for yourself or are you employed?

A. Employed by the Brooklyn Union Gas Company.

Q. How many years have you been an engineer?

A. Fifteen.

Q. To become an engineer, I take it you would have to be duly licensed?

A. No, sir, I have a degree.

Q. A college degree?

A. Yes, sir.

Q. In other words, that is a study or profession the same as law or medicine or any profession?

A. Yes, sir.

Q. I take it you have sat here for a number of days hearing much discussion about the nature of the charge in this case.

A. Yes, sir.

Q. Do you understand that the defendants at the bar of justice, Buchalter, Weiss, and Capone, are charged with the crime of murder in the first degree, the murder of a man named Joseph Rosen?

A. Yes, sir.

Q. As one of the lawyers said to another prospective talesman, that is set forth in a few lines in the indictment.

A. Yes, sir.

Q. Whether it is set forth in a few lines or a thousand lines, you understand the charge is murder?

A. Yes, sir.

Q. Is there anything about the nature of the charge which precludes you from passing judgment upon the case?

A. No, sir.

Q. May I proceed on the understanding that you have no scruples, conscientious or otherwise, against capital punishment?

A. Yes, sir.

[fol. 761] Q. If selected in the case, would you permit any of the jurors to discuss the question of punishment?

A. No, sir.

Q. When the lawyer here brought out that his client is serving a long term in jail for a prior conviction of crime and asked, and properly so, whether or not there would be any prejudice against his client for that reason, prospective talesmen heretofore said no. Is that your attitude?

A. Yes, sir.

Q. Let us go at it this way: Would you, because a man has been heretofore convicted of crime and sentenced for his offence, would that cause you to relax or deviate from

your attitude as a juror when he is charged with murder in the first degree?

A. No, sir.

Q. Since your name appeared on this special panel, has anyone spoken to you about the case?

A. Just another juror sitting in the box employed in the same business I am.

Q. Another prospective juror in this panel?

A. Yes, sir.

Q. I take it that discussion was on who maybe would get stuck for jury duty?

A. Yes, sir.

Q. Now, has business or any other contact brought you in connection with People in the Brownsville and East New York area?

A. I am connected with the transportation division of the gas company, and we have a garage at Ashford and Atlantic.

Q. Other than that connection, where you have an association with people there who are employed by your company?

A. No, sir.

[fol. 762] Q. Have you any outside contacts or association in that area?

A. No, sir.

Q. Does that pertain as well to the Brownsville district of Brooklyn?

A. No.

Q. Have you any social or other contacts in Brownsville?

A. No.

Q. Have you any contact of any kind in that area?

A. No, sir.

Q. With respect to the garment district in Manhattan, do you have any contact there directly or indirectly?

A. No, sir.

Q. Or with persons employed in the clothing industry?

A. No, sir.

Q. Or with any firms or any persons in connection with the clothing trucking industry?

A. No, sir.

Q. Do you have any contact with persons or firms on the Brooklyn waterfront?

A. No, sir.

By the Court:

Q. Ashford and Atlantic, that is in New Lots?

A. Well, that is the East New York section.

Q. Just about the boundary?

A. Yes, sir.

Q. Just about the boundary of the New Lots section?

A. Yes, sir.

By Mr. Turkus:

Q. Is there any significance to your mind in the name of any official of the Amalgamated Clothing Workers of [fol. 763] America, the name of Weinstein, or Katz; does that mean anything?

A. No, sir.

Q. By the same token, does the name of Bruno Belia, an organizer of the Amalgamated, mean anything to you?

A. No, sir.

Q. Or that of Salvatore Marazzano?

A. No, sir.

Q. Or Philip Orlofsky, at one time manager of the Clothing Cutters Union?

A. No, sir.

Q. Do you know any official or representative of Local 240 of the Clothing Drivers & Helpers Union?

A. No, sir.

Q. Or of any Teamsters Union?

A. No, sir.

Q. Does the name of Bellanca or that of Tosca have any significance to you?

A. No, sir.

Q. Or that of Terry Burns or Abie Slabo?

A. No, sir.

Q. Is there any significance in the name of Max Silverman, or Wolfie Goldis?

A. No, sir.

Q. Or the name of William Alberts, a one-time bondsman on Lafayette Street, Manhattan?

A. No, sir.

Q. Or the name of Emanuel Buchalter, does that mean anything to you?

A. No, sir.

Q. Or of any individual by the name of Weiss, in the automobile rental business?

A. No, sir.

Q. Or the name of Chevrolet sales people or the name of Weiss on the Park Slope?

A. We drive cars in there, if that means anything to you.

Q. Or the name of Philip Kowas, Philip Buchalter, does [fol. 764] that mean anything to you?

A. No, sir.

Q. Are you in sympathy with the enforcement of the Penal Law?

A. Yes, sir.

Q. By such sympathy, do you mean you will not permit people who are guilty to escape conviction or people who are innocent to be unjustly convicted?

A. That is correct.

Q. There are nine lawyers representing these defendants. I have mentioned the names to the other jurors. Do you know Mr. Barshay, a former Assistant District Attorney?

A. No, sir.

Q. Or Mr. Wegman, a former Assistant United States Attorney, or his associate, Mr. Climenko, or anyone connected with their respective law offices?

A. No, sir.

Q. In connection with Weiss, he is represented by former Judge Talley, former Assistant District Attorney Cuff, and former United States Assistant District Attorney Kriender. Do you know any of them?

A. No, sir.

Q. Do you likewise know anyone employed or associated with them in the practice of law?

A. No, sir.

Q. And the same holds true as to counsel who represent the defendant Capone, Rosenthal, Fischbein, and Rosenberg?

A. Yes, sir.

Q. You know no one connected in their office?

A. No, sir.

Q. Do you know intimately any member of the bar who specializes in the defense of men charged with crime?

A. No, sir.

Q. Have you heretofore known Mr. Geoghan, the prosecutor [fol. 765] of the county?

A. No, sir.

Q. Or any member of Mr. Geoghan's staff when he was District Attorney?

A. No, sir, I don't believe I did.

Q. Do you know Judge O'Dwyer personally, or any member of his staff?

A. I heard a member of his staff speak.

Q. Do you know that man personally?

A. No, sir.

Q. Do you recall the name of that man you heard speaking?

A. Heffernan.

Q. Have you heretofore had the benefit of jury experience in criminal cases?

A. No, sir, just civil.

Q. If accepted as a juror in this murder case, will you take the law from the trial justice?

A. Yes, sir.

Q. Will you endeavor, conscientiously, to apply the principles of law to the facts in the particular case you are trying, this murder case?

A. Yes, sir.

Q. I take it that in your line of business you have problems to work out with other engineers and other people in your division?

A. Yes, sir.

Q. You have had experience in working things out with success and understanding and in arriving at a proper decision?

A. Positively.

Q. And something has been said because of the prosecutor telling you the case is broken from the inside. That does not mean it happens. Of course, nobody contends to the contrary. Do you find any fault with the District Attorney [fol. 766] for breaking a 1936 unsolved murder from the inside, and using the testimony of one of the co-participants in that murder against the other defendant on trial?

Mr. Barshay: That is objected to.

The Court: That question has been asked of many talesmen [fol. 767]. Do you really think, Counsellor, that any-

body would quarrel with the District Attorney for using an accomplice as a State witness?

Mr. Turkus: That is something I want to find out about.

The Court: The policy of the District Attorney's office is not on trial.

Mr. Turkus: If a man is framing a man and he does not like that kind of thing he is going to disregard it.

The Court: I think that possibly to avoid interruption and objection, if you put it in a more subtle way—and this is simply by way of suggestion—"Are you prejudiced against the use of participants as State witnesses?"

Mr. Turkus: May I respectfully direct the attention of the Court that not less than twenty questions, identical questions, were objected to by the defense counsel, and in not less than twenty of those cases the objection was overruled.

The Court: I am becoming tired of overruling on a specific question.

Mr. Rosenthal: May I direct the Court's attention that Mr. Turkus is not correct in his statement. I am objecting to the political speech incorporated in the present question, in which he says that the District Attorney of the [fol. 768] County of Kings, unsolved murder, etc. It is not the question which Judge Talley heretofore objected to. He objected to the form of the question.

Mr. Turkus: Let me tell you I am not interested in any political election. I am here trying this murder case. If there is anybody interested in politics, I think Mr. Rosenthal must have his tongue in his cheek. I am here to try a murder case, and I am asking questions as a prosecutor in line with my duty. I resent such tactics.

The Court: We will get along much better if there is better feeling and understanding.

By the Court:

Q. Have you any prejudice against the use of accomplices as State witnesses?

A. No, sir.

Q. You would not have any feeling against the District Attorney who did that?

A. No, sir.

By Mr. Turkus:

Q. Have you any fault to find or any prejudice against the prosecution which employs the use of accomplice testimony?

A. No, sir.

Q. Will you, with common sense and understanding and with care and caution weigh the testimony of any man who is of bad character and who has committed crimes in the past?

A. Yes, sir.

Q. And in taking into consideration his bad character, [fol. 769] his bad moral habits, his commission of crimes, and the manner in which he lives, will you also take into consideration that you are passing judgment in a murder case and that there are rules and tests which the Court will give you to apply to the believability of such a witness?

A. Yes, sir.

Q. Will you use common sense and understanding in weighing the issue in the case as to the guilt or innocence of these defendants, no matter from where the testimony emanates?

A. I will.

Q. One of counsel suggested there are various tests that ordinarily apply in our respective walks of life. I take it that you too have tests to apply to various people with whom you do business?

A. Yes, sir.

Q. Now, those tests may not necessarily apply to men who are steeped in crime?

A. Yes, sir.

Q. We, in our every-day experience, do not deal with criminals?

A. Yes, sir.

Q. So that in weighing tests and believability, will you take into consideration everything that causes a man to talk about his erstwhile associates and bring them into the case, and find out are you getting the truth?

A. I will.

Q. Will you apply common sense and understanding to figure out the whole situation when you get it?

A. I will.

Q. The Court will instruct you as a matter of law that

every defendant on trial in any criminal case is presumed [fol. 770] to be innocent until his guilt is established by the prosecution to the satisfaction of the jury beyond a reasonable doubt. Will you follow that instruction of law?

A. I will.

Q. Will you endeavor, conscientiously, to apply it to the facts in this case?

A. I will.

Q. Will you follow the instructions of law that from the outset and until the conclusion the burden of proof is exclusively upon the District Attorney to establish guilt beyond a reasonable doubt?

A. Yes, sir.

Q. Will you follow the principle of law that a defendant in a criminal case has no burden; that he may submit himself as a witness or he may not, and if he does not no unfavorable inference may be drawn, and that he may offer proof or may not offer proof, and if he does or does not, no unfavorable inference may be drawn against him? Will you follow the instructions of law in that regard?

A. Yes, sir.

Q. Will you give the defendant on trial everything the law says he may have?

A. Yes, sir.

Q. And, by the same token, if I appeal to your common sense and bring you here proof which satisfies you beyond a reasonable doubt that there are three guilty men at this bar of justice, three men who are three of the people who killed Joseph Rosen, as I read in the indictment, will you hesitate to say so in your verdict?

A. No, sir.

Q. If selected as a juror will you discuss the case with [fol. 771] common sense and reasonably with the other jurors?

A. Yes, sir.

By the Court:

Q. As a practical question here, as to the condition of your mind in relation to your business, how many people do you have there?

A. In the company at work?

Q. Under you.

A. Two hundred.

Q. When you are away what provision is made to take care of your work.

A. My assistant does that.

Q. You have one or more assistants?

A. One.

Q. A competent man?

A. Yes, sir.

Q. Can he take care of anything that comes up?

A. Yes, sir.

Q. You would not sit in the jury box and worry?

A. I cannot help but having a little worry about business.

Q. No matter who the jurymen are, he is more or less worried about being on a jury, but somebody has to sit as a juror, and twelve men have to be selected. Will you be able to concentrate on the case?

A. I will do my best.

Q. Are you a college man?

A. Yes, sir.

Q. What college?

A. Northeastern.

Q. You are a man of sufficient education and culture to know how to consider and have the proper sense of value, I take it?

A. Yes, sir.

Q. Do you know the importance of a case of this kind to properly evaluate evidence and give a just decision?

A. Yes, sir.

Q. Can you do that?

A. Yes, sir.

[fol. 772] Q. Can you put up with inconvenience and take it on the chin?

A. I will if I have to.

Q. We are all more or less idealists. Are you an idealist to that extent?

A. I don't know whether I am or not.

By Mr. Turkus:

Q. At any rate, you are an engineer and you have had problems to settle yourself?

A. Yes, sir.

Q. We will have one issue, the guilt or innocence of three men in the Rosen murder.

A. That is right.

Q. And as to that you will devote your faculties as a juror?

A. Yes, sir.

Q. Since you are an expert in your line, do you have any bias or prejudice against the testimony which may emanate from experts on the witness stand, for example, whether he be ballistic, handwriting, or a medical expert; do you find any fault with that testimony?

A. No, sir.

Q. Is your frame of mind such that this case is an important case, important to The People of the State, and of course also to the defendants on trial?

A. Yes, sir.

Q. And if selected as a juror, will you conscientiously and honestly endeavor to arrive at a verdict that will be in consonance with justice?

A. Yes, sir.

Q. And will you, by your verdict, endeavor to do justice in the case?

A. Yes, sir.

Q. Assuming, in company with the other jurors, you hear [fol. 773] all the evidence in the case, you listen to everybody on the stand that has something to say about the case; you look the case over carefully, and you hear the respective lawyers for each defendant draw arguments and inferences from the testimony, and urge each and every argument they can in their wisdom, which they have to submit to the jury; and you have heard the prosecutor draw his inference; the trial judge gives you the law; you go in with the other jurors and conscientiously apply the law to the facts in the case and you come to the conclusion and your mind is satisfied beyond a reasonable doubt that there are three guilty men at the bar of justice, Buchalter, Weiss, and Capone, would you hesitate to so say in your verdict?

A. No, sir.

Q. Would you have any fear or reluctance?

A. No, sir.

Q. Is there anything about your past life or anything about your present connection which would in any wise effect a determination other than one in consonance with justice?

A. No, sir.

Q. And you would pronounce your verdict fearlessly?

A. Yes, sir.

By Mr. Barshay:

Q. Have you ever been on a jury on any occasion at all?

A. I have, in civil cases.

Q. Have you been on the Grand Jury?

A. No, sir.

Q. Do you know anybody in the Police Department?

[fol. 774] A. Well, personally, patrolmen.

Q. Are they in Brooklyn?

A. Yes, sir.

Q. Do you know them intimately?

A. Yes, sir.

Q. May I know their precinct?

A. One is in No. 1 downtown, Manhattan, and the others have been former chauffeurs in the Gas Company and now are on the force; I don't know where they are stationed.

Q. Did you ever discuss the question of crime with these patrolmen?

A. No, sir.

Q. More especially in this case?

A. No, sir.

Q. Has any member of your family ever been a juror in a criminal case?

A. No, sir.

Q. Were you ever the victim of any crime?

A. No, sir.

Q. Was your company ever the victim of any crime?

A. No, sir.

Q. You said you heard a member of Mr. O'Dwyer's staff speak on the subject of crime?

A. Yes.

Q. Was it the subject of this case?

A. No, sir.

Q. Was it the subject of homicide, generally?

A. No.

Q. Where was the address?

A. St. Vincent Ferrer's Roman Catholic Church.

Q. Did you know Mr. Heffernan personally, before?

A. No, sir.

Q. You met him that night?

A. Yes, sir.

Q. Were you introduced to him?

A. No, sir.

Q. Was that a long talk?

A. About an hour.

Q. It began with the investigation and prosecution of [fol. 775] crime?

A. Yes, sir.

Q. Were you impressed by his talk?

A. I was.

Q. He is undoubtedly an eloquent speaker, and I take it you believe what he said?

A. Positively.

Q. You formed a definite impression concerning the subject of crime as it was being handled by Judge O'Dwyer?

A. No, sir, the only objection I got is they have their troubles in bringing criminals to justice.

Q. You were in sympathy with them?

A. I was.

Q. And did the result of that talk cause you to be prejudiced against people charged with crime?

A. In a way.

Q. Did it cause you to be prejudiced against people charged with the crime of murder?

A. Right.

By the Court:

Q. You start out without knowing anything about the parties who are accused. The question is, are you prejudiced in advance against anybody who is accused?

A. No, sir.

Q. Did the speaker refer to any of these defendants?

A. No, sir.

By Mr. Barsby:

Q. You told me that as a result of the talk there was some prejudice in your mind about persons charged with crime?

A. Right.

Q. And it did not make any difference who these people were?

A. No, sir.

[fol. 776] Q. In view of the fact you are a taxpayer, you have learned how much trouble the prosecutor has with

investigations and prosecutions of crime, and that lecture increased your prejudice in a degree?

The Court: You mean against crime or against individuals?

Mr. Barshay: Against crime.

Q. Mr. Heffernan is chief of the Homicide Bureau, and that means chief of the bureau which investigates the commission of felonies in Brooklyn; did you know that?

A. I did not know that.

Q. Was he introduced as such to you?

A. No, sir.

Q. You can take my word for it, he is one of the big men in the office. Did he mention the name of Reles?

A. Nothing in connection with this case.

Q. That does not make any difference. Did he mention the name of Reles?

A. No, sir.

Q. Or Bernstein?

A. No, sir.

Q. Or the list of names Mr. Turkus read, like Maione, etc.?

A. I don't recall, no.

Q. Did he speak on a subject from the point of view of being centered in the East New York area?

A. I think he did mention it.

Q. Did some of the men whom Mr. Heffernan mentioned—are they familiar to you now?

A. No, sir.

Q. Mr. Turkus having mentioned the names, did you [fol. 777] compare in your mind the names he mentioned—the names Mr. Heffernan mentioned?

A. No, sir.

Q. Were they interchangeable?

A. No, sir.

Q. Mr. Heffernan, I take it, gave a great deal of credit to high police officials and to the District Attorney's office?

A. Yes, sir.

Q. Was Captain Bals one of them?

A. I don't recall the name.

Q. Do you know any name?

A. No, sir, not offhand.

Q. Did he pay any particular credit to Mr. Turkus and Mr. Klein and his other associates?

A. I don't remember that.

Q. Now, as a result of the prejudice that you have against crime in general, are you in any wise prejudiced against these defendants?

A. No, sir.

Q. You said something to Judge Taylor about being prejudiced because of a person's character.

A. That is right.

Q. Are you prejudiced in this case against our client, Mr. Buchalter, for any reason?

A. From the articles I have read, more or less made me prejudiced on the case.

Q. You read them in the newspaper?

A. Yes, sir.

Q. You read them often?

A. I would not say often.

Q. Fairly often?

A. Yes, sir.

Q. And you accepted the truth of those articles?

A. More or less.

Q. You say that, to the detriment of our client?

[fol. 778] A. I should say so.

Q. That would preclude you from rendering a fair verdict in this case with respect to our client?

A. Yes, sir.

Q. And you could not dissipate that impression?

A. I would try to.

Q. But you could not?

A. Well, I don't think so.

Q. You are therefore determined now that that bias is based on what you read against our client?

A. Yes, sir.

Q. And that it would require some evidence on his part to remove that bias?

A. Yes, sir.

Q. You would expect him or someone in his behalf to offer such evidence, wouldn't you?

A. I think so.

Q. Unless the bias is dissipated by some evidence forthcoming from us, it will not be removed?

A. Yes.

Q. Is that your honest answer?

A. Yes, sir.

Mr. Barshay: Challenge for cause.

The Court: Try the challenge.

FRANK LANZI, residing at 887 East 35th Street, Brooklyn, New York, was then sworn on the challenge.

By Mr. Barshay:

Q. Would you answer the questions the same way, now that you are under oath, as you answered them before?

A. I would.

Q. So I take it, Mr. Lanzi, that your state of mind is such that the quality of the proof would have to vary with respect to the defendant Buchalter because of that prejudice?

[fol. 779] A. I did not get that.

Q. The type of proof that you would want because of that prejudice would be either less on the part of The People or more on the part of the defense?

A. More on the part of the defense.

Mr. Cuff: We all join in challenging for cause.

By Mr. Turkus:

Q. I think you told Judge Taylor that you were a college graduate.

A. Yes, sir.

Q. And, in addition, I think you told me you practiced your profession as an engineer for fifteen years.

A. Yes, sir.

Q. I think you understand that in a publicised case most everybody reads something in the press?

A. Yes, sir.

Q. And that people who read newspapers sometimes form an impression from the reading matter?

A. Yes, sir.

Q. I think you said your mind is such that it is desirable to get on the jury men of experience?

A. Right.

Q. And men who can decide the case free of any outside concern except the evidence they hear in the case, and render a verdict of justice?

A. Yes, sir.

Q. At the outset you told me you had no experience as a criminal juror.

A. Yes, sir.

Q. So there are principles of law in a criminal case that you are not aware of?

A. Yes, sir.

Q. And when you answered Mr. Barshay, did you know [fol. 780] that a defendant need offer no evidence in his case?

A. I did not know until I heard it in court, in a previous case.

Q. Bearing in mind the background which you have had, the experience which you have had, if Judge Taylor should tell you in his charge to the jury that the defendant has no burden in a criminal case, would you follow his instructions?

A. I would.

Q. Would you apply those instructions to the facts in the case.

A. I would.

Q. If Judge Taylor told you the defendant need not bring any evidence in the case at all; he can sit down and say to the District Attorney, "You go ahead, you say I am guilty, prove it," and the jury can draw no inference unfavorable to him by reason of that—would you follow that instruction of law?

A. Yes, sir.

Q. If Judge Taylor told you there is only one burden in a case from the standpoint of guilt and that is with the District Attorney, to establish guilt beyond a reasonable doubt, would you rely on that and follow it?

A. I would.

Q. We are endeavoring to get the right type of juror in the case. Is your mentality such that you can take whatever you have read in the newspaper and lay it aside?

A. I would try to do that.

Q. Nobody can tell any better than you can about your capabilities. Isn't it sensible that you decide it upon the evidence you hear in court?

A. Yes, sir.

[fol. 781] Q. You find no fault with that logic?

A. No, sir.

Q. No matter who the man may be, no matter what the newspapers may say against him, do you find any fault with the logic that every defendant should get a fair trial?

A. No, sir.

Q. And that every defendant in a criminal case should have everything the law gives him, every presumption of innocence and the doctrine of reasonable doubt, and everything that the law of the land says the defendant in a criminal case should have?

A. Yes, sir.

Q. Isn't your state of mind such that you can take a newspaper article and lay it aside and decide this case and give a verdict that renders justice, on the evidence you hear?

A. I will do my best.

Q. You are the only one who can tell whether you will do all this, whether you will lay that aside. Would you expect, because somebody has a write-up in a newspaper, that the prosecutor be relieved of establishing his guilt at all, and take the newspaper and say to the jury, "Here, read it. Find him guilty"?

A. No, sir.

Q. Would you expect, because you read something in the newspaper, that the degree of proof required should be lessened on the part of the prosecutor?

A. No, sir.

Q. Or would you, because somebody wrote something in the newspaper, expect the law to be changed and that the defendant should have to come in and prove the falsity of [fol. 782] things some newspaper wrote about him?

A. No, sir.

Q. Cannot you take your place in this box and give these defendants everything the law says they should have, every solitary thing, from top to bottom, disregarding whatever you have read, view the evidence as a juror, and arrive at a verdict that reflects substantial justice?

Mr. Turkus: I object to the form of the question.

Mr. Barshay: Question withdrawn.

By the Court:

Q. Don't you think, with your cultural strength and experience, you are competent to put aside any impression you may have received and decide this case without any reference to that impression?

A. I still think I would have to have some kind of evidence to remove that impression.

Q. You still think the impression holds you and you cannot put it aside?

A. I could put it aside, but to cast it aside entirely, I don't think I could. I would have to have some proof to do that.

Q. You differentiate between thought and idea?

A. Yes, sir.

Q. You are perfectly sincere in this?

A. I am.

Q. You realize the case has got to be tried?

A. I realize that.

Q. No matter how long it takes?

A. Yes, sir.

Q. And that twelve men must be selected, and when a man with your cultural background and your mentality is found, [fol. 783] he is an asset on the jury, if he can be unprejudiced.

A. I realize that.

Q. Can't you go into the case unprejudiced?

A. I will do my best.

Q. We have to have a definite answer. We do not know what your "best" is.

A. I don't think I could.

The Court: Challenge sustained.

(A recess was then taken until 2 p. m., talesmen admonished as to their demeanor. Defendants remanded.)

[fol. 784] Afternoon Session—Trial Resumed

The Court: Without trying to hurry counsel, the Court will be gratified if at least two more jurors can be in the box before this week's work is completed.

Mr. Talley: I would like to have eleven more.

THOMAS G. JONES, of 34 Cambridge Place, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Mr. Jones, what section of Brooklyn is Cambridge Place located?

A. In the Hill section between Greene and Gates Avenue.

Q. And have you lived in that section for a number of years?

A. Sixteen years.

Q. I take it you have heard the questions asked of many of the other prospective talesmen in regard to the nature of the charge?

A. Yes, sir.

Q. You understand, do you not, that these defendants at the bar of justice are charged with the crime of murder in the first degree?

A. Yes, sir.

Q. Is there anything about the nature of the charge which would impair your service as a juryman?

A. No, sir.

Q. You have, have you not, no conscientious or other scruple against capital punishment?

A. No, sir.

Q. May I proceed with the understanding that you will [fol. 785] not discuss or permit any discussion of punishment to take place in the deliberations of the jury?

A. Yes, sir.

By the Court:

Q. Was not your neighbor Dr. Hancock?

A. He lived in the neighborhood—I don't know just where.

Q. I think he lived on your block.

A. Yes, years ago.

Q. He is dead?

A. Yes.

Q. What is your business?

A. I am Y.M.C.A. secretary.

By Mr. Turkus:

Q. I take it that your business does not bring you into contact with Brownsville or East New York?

A. No, sir, I am in the Flushing area, connected with the Flushing Y.M.C.A., and before that I was connected with the old East Side Branch in New York City.

By the Court:

Q. You have been at it all your life?

A. No, sir, since the last World War.

Q. Twenty-three years.

By Mr. Turkus:

Q. May I go along with the understanding that you have no contacts, directly or indirectly, with the clothing district, garment district, clothing truckers, or any allied industries?

A. No, sir.

Q. Since your name appeared on this special panel and you received your notice of prospective service, did any- [fol 786] body speak to you about the case?

A. No, with the exception I have spoken of it at home and also in the Y.M.C.A., but there was no discussion.

Q. And then the discussion was limited to your prospective service in the case?

A. Yes, sir.

Q. Making arrangements in your place of business and at home?

A. Yes, sir.

Q. Are you in sympathy with the enforcement of the Penal Law of the State?

A. I am.

Q. The defendants at the bar are represented by nine lawyers. I have mentioned their names repeatedly as we went along. Do you know any of these nine lawyers individually?

A. No, sir, I do not.

Q. Or do you know consciously anyone employed in their law offices or associated with them in the practice of law?

A. No, sir, I do not.

Q. Do you have the intimate acquaintance with any lawyer who specializes in the defense of criminal cases?

A. Not in this county. In Queens I know Judge Colden and also Richardson—I think he is in the Magistrate's Court.

Mr. Cuff: Municipal Court Judge.

A. (continued) And then I also—when I was in the New York Y.M.C.A. we used to have Harold Hastings. He was one of our members.

Q. I think he was the chief assistant at one time. [fol 787] A. Yes, and then I think he did run for District Attorney, but I have not seen him for a number of years, but I know him.

Q. Mr. Jones, have you heretofore had the benefit of jury service in a criminal case?

A. No, sir.

Q. If instructed by the Court that a defendant is protected by a presumption of innocence, that he is presumed to be innocent as he is seated in the court-room, and the presumption continues throughout the trial and stays with him until and unless the District Attorney overcomes that presumption by evidence establishing guilt beyond a reasonable doubt, will you apply that law to the facts of this case?

A. Yes, sir, I will.

Q. And when the Court tells you that the burden is upon the District Attorney to establish guilt beyond a reasonable doubt, will you follow that instruction of law?

A. I will.

Q. And conscientiously endeavor to apply it to the facts in this case?

A. Yes, sir.

Q. And if the Court instructs you on the law, as you undoubtedly will be instructed, that defendants may or may not take the stand as in their judgment they deem wise, and if they do not, no unfavorable inference may be drawn against them, will you accept that instruction of law?

A. I will.

Q. And will you conscientiously endeavor to apply it to this case?

A. I will.

Q. And if you are instructed a defendant has no obligation or burden to bring in evidence of any kind, nature, or description if he does not desire to do so, will you follow that instruction?

A. I will.

Q. In short, will you give these defendants everything that the law of the land entitles them to have?

A. Yes, sir.

Q. Getting down to the business of this specific case, do you have any bias or prejudice against a prosecution of a case wherein the use or employment of accomplice testimony is had?

A. No, sir.

Q. Will you look with care and caution, will you examine with every God-given sense you have got, the people who

testify in the case, and look them over with every degree of caution? Will you do that?

A. I will.

Q. Will you, in using and weighing all the considerations that you want to apply, or any tests that you want to apply to any witness, will you take into consideration that we are not trying any civil case between two people, but that we are trying here a criminal case, a murder case?

A. Yes, sir.

Q. And will you take into consideration that there may be types of individuals that come into a criminal case that we may not ordinarily meet in our every-day business experience? Will you take that into consideration?

A. I will.

Q. And will you weigh the whole issue in the case from a common-sense, reasonable, and understanding viewpoint?

A. I will.

Q. May I go along with the understanding that you have [fol. 789] no prejudice either against the prosecutor of the county, Judge O'Dwyer, or against the prosecution wherein accomplice testimony is employed?

A. I have none.

Q. I believe you have already stated you do not know Judge O'Dwyer, the District Attorney.

A. No, I do not.

Q. Do you know Assistant District Attorney Joseph Klein, or Turkus?

A. No, I do not know any in Brooklyn at all.

Q. So you know no member of Judge O'Dwyer's staff?

A. No, sir.

Q. Did you formerly know anybody connected with Mr. Geoghan's staff when he was District Attorney?

A. No, sir.

Q. If accepted as a juror, will you solve the issue in this case, the guilt or innocence of the defendants at the bar, with reasonable and fair discussion with the other jurors?

A. Yes, I will.

Q. Will you, if instructed by the Judge that the testimony with respect to one defendant may apply only to him, or it may apply to two of the defendants, will you endeavor conscientiously to apply the testimony in those connections as instructed by the Court?

A. Yes.

Q. And will you endeavor conscientiously, when the testimony affects every defendant in the case, endeavor to apply that testimony to each of the defendants?

A. Yes.

Q. Something has been said here about the defendant Buchalter having been previously convicted of crime and [fol. 790] serving a long-term sentence. Would you permit that to cause you to deviate or relax your duty as a juror in the determination of this issue where he is brought to the bar of justice on a charge of murder in the first degree?

A. No, sir, because I believe they have already paid for what they did.

Q. And that wipes the slate clean as far as that is concerned?

A. Yes.

Q. And on this issue——

Mr. Cuff: Let him finish his answer.

A. (continued) I say that whatever previous crime they have committed, the State has punished them for that crime, and this has nothing to do whatever with anything of that, so that they are starting with a clean slate in this trial. That is the way I feel about it.

Q. So that you are going to decide, if selected as a juror, this murder case on the evidence in this case?

A. Yes, sir.

Q. If after you have heard all the evidence in the case, you heard all of the lawyers tell you what they think of the evidence, and the prosecutor draw his inferences, the learned Court instruct you on the law, and you talk the case over with the other jurors with common sense and reasoning, and you come to the conclusion that you are satisfied beyond a reasonable doubt that at this bar of justice there are three guilty men, Buchalter, Capone, and Weiss, will you hesitate to say so in your verdict?

A. No, sir.

[fol. 791] Q. Is there any outside consideration under the sun that would affect your ability to render a true and honest verdict in consonance with the principles of justice?

A. No.

Q. And if selected as a juror, will you endeavor conscientiously to arrive at a just and honest verdict in the case?

A. I will.

By Mr. Talley:

Q. Mr. Jones, how long have you been identified with the Y.M.C.A.?

A. Since 1917.

Q. How long have you been a secretary for one of its branches?

A. I was two years with the Army in war service, and one year with the merchant marine training ship service. Then when I came back in 1920 I went to the old East Side Branch in New York, and I was secretary there.

Q. Were you in the employ of the Y.M.C.A. during those two years that you speak of?

A. Yes, sir.

Q. Were you known as a Y.M.C.A. secretary in those services?

A. Yes, sir.

Q. Have you read anything about this case or anyone associated with it?

A. In the paper from time to time I have seen the headlines, just the men's name, but I have not read anything about it. I don't care to read very much about that kind of thing.

Q. With respect to these defendants did you read anything?

A. No, sir, and I did not know anything about the case [fol. 792] until I came here and saw it on the bulletin.

Q. Is there anything that you have read about the case or anyone associated with it that has made any impression upon you at all?

A. No, sir.

Q. Have you sat as a juror in a criminal case at any time?

A. No, sir.

Q. Have you sat as a juror in a civil case?

A. Yes, sir.

Q. In what court?

A. Surrogate's Court.

Q. Is that the only court in this county?

A. No, and also in the City Court for accident cases. That is some time ago, though.

Q. But you have had no experience as a juror in a criminal case before?

A. No, sir.

Q. The Court will charge you that after hearing all the evidence, when the case is submitted for the consideration

of the jury, that you should not convict or bring in a verdict of conviction of these defendants or any of them unless you are satisfied of the guilt of these defendants or all of them beyond a reasonable doubt. If you have any reasonable doubt in your mind as to the guilt of these defendants or any of them, will you resolve that doubt in favor of the defendants?

A. I will.

Q. The Court will charge you that these defendants, as to the defendants in every criminal case, come into court with a presumption of innocence in their favor.

A. Yes.

Q. Will you indulge that presumption in favor of these [fol. 793] defendants until the evidence outweighs, that is, the evidence that The People may present, outweighs that balance?

A. I will.

Q. Against these defendants?

A. Yes, sir.

Q. And you do not think you would have any difficulty doing that, do you?

A. No, sir.

Q. Have you ever heard, in the Y.M.C.A. or any place else any of the Assistant District Attorneys of this county talk or lecture about crime or the enforcement of criminal law?

A. No, sir, I have not, but I have had charge of the program in the Y.M.C.A. where we have had a man come in from the Parole Office, and then I had a personal friend, George Dr——, but he passed on last year. He was head of the Crime Prevention Society, but those talks have all been on a constructive basis, preventive basis, to keep young people from getting into things. There is nothing discussed of the criminal nature, or there is no one at all spoken of.

Q. Are you a member of any organization that has to do with the enforcement of law, the prevention of crime?

A. No, I am not a member at all, but, of course, in my connection with the Y.M.C.A. I have perhaps associated with the different organizations in obtaining speakers, and, as I said, I know Judge Golden and some of the others, but as far as that, their influencing me, it would not, because our policy in the Y.M.C.A. is, of course, preventive policy, to help young men not to do things wrong, and

if they have done things wrong, to try and help them as [fol. 794] much as we possibly can.

Q. Yes.

A. Of course, if they break the law and then they have to undergo the punishment for what they have done—that is our policy, but we try and help them as far as we can.

Q. Do you know of any reason at all, by reason of your association with the Y.M.C.A. or from any other consideration, why you could not sit as a fair and impartial juror in this case?

A. I do not.

Q. Is the branch of the Y.M.C.A. with which you are associated here in Brooklyn?

A. No, sir, it is in Flushing.

Q. How long have you been a resident of Brooklyn?

A. Forty years.

Q. You never lived in Queens?

A. No, sir.

Q. With whom have you talked about this case before today?

A. Well, as I said, just at home, I spoke with my wife, and then out at the branch I had to speak with the general secretary to tell him that I might be called on jury duty, but there was nothing discussed about the case.

Q. Neither with your wife nor with the general secretary?

A. No.

Q. The latter——

A. When I went home I told her what Judge Taylor told us, not to read the newspaper, so when I get home at night time she reads the newspaper and she hides them from me. She says, "You cannot have that."

Q. She does not want to get in bad with Judge Taylor?

A. No.

[fol. 795] Q. Does not want to get you in bad. Did you ever hear any discussion over the radio?

A. No, sir.

Q. About any matters connected with this case?

A. No, sir.

By Mr. Rosenthal:

Q. Mr. Jones, are you in that branch of the Y.M.C.A. that is opposite the high school?

A. Yes, Northern Boulevard.

Q. Right off Main Street?

A. Yes.

Q. Do you know Judge Golden socially?

A. Well, I have met him a number of times. No, I have never been to his home.

Q. Have you been to the court where he presides?

A. No, but I have met him a number of times in a community interest. He has always lived in Flushing, and during the organization for the Queens College the group of men met at the Y.M.C.A.

Q. I was one of those men?

A. Oh, yes.

Q. Judge Golden lives in Whitestone?

A. Yes, sir.

Q. What I am trying to get at is have you had any discussion with him in relation to crime or individuals who may have come before him in his capacity as a county judge?

A. None whatever.

Q. Your relationship was due to meeting him at the various meetings that were had?

A. That, and I have heard him speak in connection with the hospital drive and the churches out there.

Q. Regarding Mr. Hastings, have you had any discussions with him in your friendship with him in relation to crimes?

A. No, I have not seen him, oh, about fifteen years or more.

[fol. 796] Q. How long have you been in the Flushing branch of the "Y"?

A. I went there when it was opened in 1926.

Q. That is about fifteen years?

A. Yes.

Q. You say you merely read headlines with respect to this case; is that correct?

A. Yes.

Q. Have you read any articles at all in the *Mirror*?

A. No, sir.

Q. What paper do you customarily read?

A. We usually read the *Tribune* in the morning and then I have the Long Island *Star* out at Flushing, and at home we have the Brooklyn *Eagle*.

Q. You do not find any articles in the Long Island *Star* about this case?

A. I have not seen any.

Q. My name is Sidney Rosenthal; my office is in Long Island City.

A. Yes.

Q. You do not know me or have not heard of me?

A. No, sir, I do not know you at all.

Q. The mere fact that The People produce people of former criminal records who, according to the District Attorney, will testify to the facts or the alleged facts concerning this crime would make you weigh their evidence a little more carefully than it would were they of a different character, wouldn't it, sir?

A. Well, I would weigh their evidence very carefully, yes.

Q. Assuming, for instance, that witnesses were called—
— Let me withdraw that.

Q. You rightfully said that if a person had committed a [fol. 797] crime and had been punished for it, that that has nothing to do in this particular case, that they are on trial for, this particular crime. However, if certain witnesses take the stand who have committed crimes to the knowledge of the District Attorney and have not been punished for them up to the present time, admitting crimes of murder, perjury, and other things, that would cause you to hesitate and weigh very carefully what motive or interest they may have in making the statements that they have made; is that true, sir?

A. Yes.

Q. It would cause you to weigh more carefully, especially if you felt that although they admitted that they had committed a number of murders, they themselves were not going to be punished for those murders? Wouldn't that make you weigh it carefully?

A. I would weigh it very carefully.

Q. The testimony that they are giving. If the same were true of the person who were to supply what has been called throughout the examination of jurors this outside evidence tending to corroborate the accomplice—I suppose you heard that?

A. Yes.

Q. So often that it is familiar without my going into detail. You would also weigh in your mind the testimony of those individuals very carefully?

A. Yes.

Q. Have you in any wise prior to your being called for jury duty heard the names of any of these defendants at all in any respect?

A. I just recognize one of them that I have seen in a [fol. 798] headline, but I have never read the articles.

Q. Without mentioning the particular individual, have you ever discussed that individual with any person or persons?

A. No, sir.

Q. Did you, in addition to reading the headlines, read any of the subject-matter which was alleged to have related to that particular individual?

A. No, sir.

Q. Have you in any wise formed any impression of any character concerning any of the defendants?

A. I have not.

Q. So that at the present time your mind is free and open?

A. Yes.

Q. And you can be guided solely by the credible evidence, that is, the evidence that you believe as it is produced, the sworn evidence; is that correct?

A. Yes.

Q. You were asked by the District Attorney whether or not under the circumstances—if you were not asked, it has been asked of everybody else—whether you would have the courage of coming in with a verdict of guilty if you felt that the three men at the bar of justice of the County Court of Kings County, Part 3, were guilty in your opinion. Do you recall that question being asked in form and substance either of you or the men who preceded you?

A. Yes.

Q. Using the same preamble, without going into detail, would you have any hesitancy if you in your own mind were not convinced in accordance with the established [fol. 799] principle of law of their guilt, in coming out and saying, "Not guilty"?

A. No, sir.

Q. You would not have any such hesitation?

A. No, sir.

Q. No question, sir, that each individual jurymen that is called here has a right to formulate his own opinion from the evidence? You understand that?

A. Yes.

Q. You further understand that you have a right to fairly discuss your point of view with the other jurymen?

A. Yes, I do.

Q. Without the fear of an Assistant District Attorney or anybody else accusing you of rancor or bitterness, you have that right; you understand that? And without the fear of having anybody charge that you are trying to hang a jury? You understand that, sir, too? If, after arguing and deliberating with your fellow jurymen the guilt or innocence of any one of these three defendants, they are unable to convince you of the fact that the foundation of your reasoning is wrong—is that clear to you?

A. Yes.

Q. But that, listening as you do, carefully to their interpretation of the facts you still retain the opinion that you formed, would you, merely because of the statement of the Assistant District Attorney here, before you were called, or any other person's statement, have the fear of sticking to your opinion, under the theory that you might be accused of trying to hang a jury or having rancor or bitterness—would you be afraid to hold out?

A. No.

[fol. 800] Q. Would you change your opinion merely because someone else has had prior jury service?

A. No.

Q. Or, because of the length of time or the numbers that might be against you?

A. No, sir.

Q. You realize that your verdict, when it comes in, whether it is in accord with any of the other jurymen or not, is the one which is impressed upon your conscience as the righteous verdict; you understand that?

A. Yes.

Q. And you understand if it were not for that fact we would not need twelve men, we would only take one? You understand that?

A. Yes.

Q. So that you are entitled to an opinion as long as it is not an opinion which is a consideration outside of the evidence? You understand that?

A. Yes.

Q. Is there anything at all, sir, that has not been reached either by the questioning of the District Attorney or by

Judge Talley or myself that you yourself feel would incapacitate you from serving as a fair and impartial juror?

A. No, sir, there is not, to my knowledge.

Mr. Rosenthal: No challenge.

By Mr. Climenko:

Q. Mr. Jones, have you at any time read the *Christian Science Monitor*?

A. I have occasionally seen it, yes.

Q. Have you ever read anything about any of these defendants in that periodical?

A. No, sir.

[fol. 801] Q. And, as a matter of fact, you have never read anything about any of the defendants of which you have a present vivid recollection, as you think about it now?

A. No, none.

Q. And you have never sat in the trial of a criminal case?

A. No, sir.

Q. You have never studied law?

A. No, sir.

Q. So that what you may know about the concepts of our law is what you have learned listening to these questions in the last few days?

A. Yes, sir.

Q. You know, of course, from those questions that the defendants are assumed to be innocent?

A. I do.

Q. There is nothing in the background of your professional life which prejudices you against any defendant simply by reason of the fact that he is brought into a court-room like this?

A. No, sir.

Q. You know from the nature of your work that an indictment is merely an accusation?

A. Yes, I know that.

Q. That the indictment is not proof of anything; is that right?

A. That is right.

Q. You know from the teaching of your professional experience that every man is entitled to a fair trial; is that correct?

A. That is right.

Q. And you resent any invasion of that right that may ever have been made by a periodical simply in the pursuit of circulation; isn't that right?

A. Yes.

[fol. 802] Q. You understand what I mean by that question?

A. I do.

Q. You understand that one up to the hilt, don't you?

A. Yes.

Q. So that, were you to sit as a juror in this case you would not for one instant permit the fact that newspapers for circulation purpose may have mentioned any defendant by name prior to the beginning of this trial, that would not influence you at all, would it?

A. No, sir.

Q. You would listen to this case simply on the proof as it is adduced here, isn't that correct?

A. Yes, sir.

Q. The mere fact that this court is convened in the physical way that it is and that defendants are led into court in the custody of guards, would not prejudice you against any defendant, would it?

A. No, sir.

Q. You know that the question of innocence or guilt is one which is to be investigated only when the trial begins?

A. That is right.

Q. Isn't that correct?

A. Yes, sir.

Q. And you are confident that you would not permit yourself to be prejudiced against anyone charged with crime simply because he had been charged with a crime; isn't that correct?

A. Yes.

Q. Mr. Turkus has asked you whether you would have any prejudice against what he calls accomplice testimony, and you said that you would have no prejudice against accomplice testimony as such; is that correct?

A. That is correct, sir, yes.

Q. But you understand, do you not, that your duty as a [fol. 803] juror, were you selected as one, would be to pass judgment on the credibility of witnesses?

A. Yes.

Q. That is really the heart of the function of a juror?

A. Yes.

Q. To decide by the standards of his common sense, sagacity, that he has learned from his every-day experience, whether or not a man is telling the truth or lying. That is what we mean by testing credibility.

A. Yes.

Q. That is what you understand to be meant by that phrase?

A. Yes.

Q. You have to pass on such questions every day of your professional life, don't you?

A. Yes, sir, I have to have quite a number of times, when I have to decide on men, whether they are telling the truth or giving me a hard luck story or just make a story out of it.

Q. And sometimes you realize, you always realize, whether you apply it consciously or subconsciously, that in testing the truthfulness of a man's statement to you you have to look to his motive or lack of motive, isn't that true?

A. Yes.

Q. Sometimes an individual is so situated that he is motivated to tell an untruth; isn't that so?

A. Oftentimes.

Q. Now, assume that a man takes the stand and says that he is an accomplice, and assume that it develops that he has a motive for telling an untruth, could you take that into consideration in passing on the honesty or dishonesty of his statement?

A. I take everything into consideration.

Q. All right. When you say "everything," let us suppose this possible case: Supposing a man takes the stand and he says, "I committed eleven murders in Kings County and I have not been prosecuted for any one of them and I hope to obtain leniency through the assistance, the good word, of the District Attorney of Kings County." Would you take into consideration in testing the honesty or dishonesty of his statements the situation in which he is placed and the situation from which he speaks?

A. Naturally, yes.

Q. In other words, you would realize that a man thus situated had the strongest possible motive to tell a lie; is that right?

A. Well, yes, he would have a motive to tell a lie, but at the same time he may tell the truth.

Q. He might be telling the truth, but you realize that he would have a great motive to tell a lie?

A. Oh, yes, I can judge that.

Q. And in determining whether or not he was telling the truth or telling a lie, you would consider the existence of that motive, would you not?

A. I would, but yet there would have to be something else presented. You understand what I mean?

Mr. Talley: Mr. Jones, will you speak out loud?

Mr. Turkus: He wants corroboration.

Mr. Climenko: Pardon me, he did not say anything of the sort, and we are waiting for him to state what had [fol. 805] been inaudible.

Mr. Turkus: Is it your charge that I am trying to influence a prospective juror?

Mr. Cuff: May we have the answer read?

(Answer read.)

Q. Had you finished that answer?

A. No. As I have sat and listened I have heard it mentioned a number of times that the testimony of such a man would not be acceptable unless there is other information presented with it. It would be valueless unless they could produce something else. That was my feeling about it.

Q. In other words, you realize that an accomplice must be corroborated by someone who is not an accomplice?

A. Yes, that was what I meant.

Q. Following through your understanding on that, if the Court shall charge you that an accomplice cannot be corroborated by another accomplice, would you have any difficulty in accepting that instruction of law?

A. I would accept whatever the Court says.

Q. I am sure you have that readiness to do it, but do you understand the hypothetical rule that I am referring to? Suppose that thirty persons take the stand.

A. Yes.

Q. And assume with respect to all of them the Court holds that they are accomplices as a matter of law.

A. Yes.

Q. And the Court instructs you as a juror and your [fol. 896] associates in the jury box that an accomplice cannot be corroborated by another accomplice nor may one accomplice be corroborated by thirty accomplices, there must be a non-accomplice witness; would you have any difficulty in accepting that proposition of law?

A. No, sir.

Q. You now understand what I mean by it?

A. Yes.

Q. I now ask you this question——

The Court: Interrupt me if you do not want him to answer this:

By the Court:

Q. You realize that in determining who tells the truth, one of the first things we do is to ask ourselves who says it?

A. Yes, sir.

Q. If he is a man of character, we place some dependence on that. You realize that?

A. Yes, sir.

Q. If he is not a man of character, that goes out?

A. I see, yes, sir.

Q. That leaves only plausibility? You realize that?

A. Yes.

Q. Which may be subject to check-up. Now, supposing the Judge should charge you that plausibility alone is not enough from an accomplice, there must be corroboration tending to connect the defendant with the commission of the crime, there must be sufficient to satisfy the juror; will you honestly apply that, sensibly apply it?

A. I will, sir.

[fol. 807] Q. In a manner that satisfies your own conscience that you have done it adequately?

A. Yes.

By Mr. Climenko:

Q. Mr. Jones, apart from that, for one minute, as you construe your duties as a citizen, your duties were you to be accepted as a juror here would be to listen impartially to the evidence; is that correct?

A. Yes, sir.

Q. If at the conclusion of the case you entertain a reasonable doubt as to the guilt of any defendant, it would then be your duty to return a verdict of Not Guilty, is that correct?

A. Yes, sir.

Q. You have no hesitation in recognizing that as part of the obligation of the jurors' oath?

A. No, sir.

Q. And of course, also, you have no prejudice against any defendant or sympathy for him?

A. No, sir.

Q. Is that correct?

A. That is right.

Q. The same answer applies with respect to the prosecution; is that correct?

A. That is right, sir.

Q. In other words, it is not your duty as a citizen sitting in the jury box to be influenced by the fact that a witness is produced by the prosecution. You understand that?

A. I understand, yes.

Q. I will put it to you another way: Would you more readily believe a man sworn as a witness because he was produced by Mr. Turkus?

A. No, sir, I would not listen to one more than [fol. 808] the other. If Mr. Turkus produced a man and he gave the evidence and, after weighing the evidence, I thought that was right, that is what I would stand by, and also if the other side were to produce evidence that, after weighing it, I considered that evidence right, why that is what I would believe.

Q. Let us ask about that for a moment, Mr. Jones. Suppose that the other side does not produce any evidence.

A. I understand from what I have heard in the court here they don't have to produce anything, the burden is on the District Attorney to furnish that, but he would have, he has got to furnish it to the satisfaction of the juror so that the juror can decide what is right and what is wrong.

Q. To their satisfaction beyond a reasonable doubt?

A. Yes, sir.

Q. You would not be prejudiced against the defendant by reason of his election not to produce any evidence?

A. No, sir.

Q. That idea, as a principle, does that violate your sense of justice?

A. No, sir.

Q. You think that is perfectly fair?

A. I think so.

Q. Coming back to the question relating to this problem of accomplice, you said that you understood that the testimony of an accomplice would not be of any value unless it was corroborated; is that right?

A. That is right.

Q. Assume that the District Attorney should attempt to furnish corroboration from a witness, and in connection [fol. 809] with that witness you might, in the exercise of your good sense, detect the existence of motives to falsify; would you, in appraising the truthfulness or dishonesty, as the case might be, of that witness, use your ordinary common sense and your ordinary ability to appraise a narrative and distinguish between truth and falsity?

A. I would.

Q. In other words, you would not be more lenient in testing the truthfulness or the falsity of such a witness simply because, as you understand the rules of evidence, the District Attorney might be particularly dependent on that particular witness?

A. No, sir, that would have nothing to do with it whatever. The evidence would have to be presented, and I would judge according to the evidence. I would not be any more lenient because of that fact.

Q. Yes. Now suppose that this particular witness who is offered as a corroborating witness is a person who has a record, which he readily admits, of having committed perjury in other courts—you understand what the crime of perjury is, do you not?

A. Yes.

Q. Suppose that that particular man says yes, "I have sworn to tell the truth solemnly in other courts of law, and I violated that oath, I swore to tell the truth and actually I told a lie that was material to that other case when I was a witness there," would you accept that admission of past perjury as a factor in weighing his credibility as he sits here in this case?

[fol. 810] A. Yes, I would.

Q. Would you normally assume that a man who admits that he lied after taking an oath solemnly in a prior case, might well be lying in this particular case?

A. Yes, and yet he may tell the truth and there may be other evidence presented from the right source that would show that he was telling the truth.

Q. Mr. Jones, I am afraid you are ahead of me at this point, because I am talking about this man, this hypothetical man, not as an accomplice any more but as a person who is submitted to your scrutiny by the prosecution as a witness in corroboration of an accomplice. I am not talking about an accomplice.

Mr. Turkus: I object to it. The prospective talesman has properly answered the question in detail. He has even gone beyond that point.

The Court: Overruled.

Q. Understand me. It is not a question any more as to whether or not this particular man who admits to past perjury—

A. Yes.

Q. —is, in turn, being corroborated. That is not the case and the question I am trying to put to you. The question I am putting, this man is offered by the prosecution in an effort to corroborate the accomplice. The fellow who is so offered admits that on past occasions he himself has committed perjury. Would you take that fact, that admission of his past deliberate infringement of an oath to tell the [fol. 811] truth, into consideration when you passed on the problem of whether presently he was telling the truth or telling a lie?

A. I would take it into consideration. I would be very careful to gather everything that was presented, so that I could judge.

Q. Is it not an important factor to you in assessing the truthfulness of a man as to whether or not he admits that on prior occasions he has deliberately lied to you?

A. Yes, sir.

Q. That is the standard which you employ in your professional life and in your private life, isn't it?

A. Yes, sir.

Q. A man today tells you one thing and tomorrow comes back and says, "I lied to you yesterday, Mr. Jones, I did solemnly represent to you that I was telling the truth yesterday, but I lied to you," and then he tries to make a new solemn representation to you. The fact that he did lie when he was representing to tell the truth is a factor that makes you terribly suspicious of him; isn't that so?

A. Yes.

Q. It may be that, using the lawyer language, that perhaps is a little too present in my questions, I made the questions very complicated, but that is all I am asking of you. I am saying to you, suppose that in the guise of a corroborating witness Mr. Turkus produces a man who says, "Yes, two years ago or three years ago I was in such and such a court of this state; I solemnly swore to tell the truth, and I did not tell the truth, on the contrary, I lied; today I have sworn again to tell the truth. By the fact that [fol. 812] I am on the stand I am asking you to accept my testimony as true." Now, you know by that recital, part of which is implicit, you know by that recital that that man has admitted that he deliberately lied on a prior occasion that was of equal solemnity. I am asking you would you not take that into consideration as a serious factor affecting your ability to believe such a witness.

A. Yes, I would.

Q. And would the fact that that particular witness who was so burdened with the history of perjury, which he admits, is a person on whom the prosecution is depending for corroboration according to the theory of this case, would that fact of the prosecution's reliance and dependence on him induce you in any way to relax the scrutiny which you feel should ordinarily attach to appraising the honesty of a statement from such a tainted source?

A. No, sir.

Q. Not one bit?

A. No, sir.

Q. That man, because he admits having committed perjury, is a person of whom you must be particularly careful; isn't that so?

A. Yes, sir.

Q. If a private transaction between you and such a person were involved, you would be very careful, wouldn't you?

A. I would.

Q. You would not relax your carefulness by reason of the fact that you are not a party to a transaction with such a person, but, on the contrary, because you are in a situation [fol. 813] where the fate of other persons is dependent on your judgment of such a person—you would not relax your carefulness one bit, would you?

A. No, sir.

Q. On the contrary, you would increase your carefulness?

A. I do not know whether I would increase my carefulness, because I would try and be as careful as I could through the whole procedure, and I don't think if your mind is set on anything and you are doing it the best you can, that you can increase it more.

By the Court:

Q. In your Y.M.C.A. work do you have to pass on complaints concerning boys who are members of the Y.M.C.A.?

A. Sometimes, yes.

Q. And how often does that happen?

A. Not very often, but every once in a while even boys in the Y.M.C.A. get into trouble.

Q. You try to get at the real truth in those cases?

A. Yes.

Q. Does the Flushing Y.M.C.A. also have a debating association?

A. We have a speakers' guild there, yes.

Q. They have debates with judges of debates?

A. No.

Q. Have you ever acted as a judge of a debate?

A. No, sir.

By Mr. Climenko:

Q. Mr. Jones, if you were chosen as a juror, would you be affected in your consideration of the issue of innocence or guilt as against any one of these defendants, would you be affected by the fact that that defendant did or did not take the stand?

A. No, sir.

[fol. 814] Q. In other words, the fact that a defendant did not take the stand would not be a circumstance which would prejudice you against that defendant?

A. No, sir, not at all.

Q. You don't expect that he is under any obligation to take the stand?

A. So I have learned since I have been sitting here.

Q. And, having learned that, you require no difficulty in accepting that proposition?

A. No, sir.

Q. You would not the more readily believe any witness against a particular defendant by reason of that fact, that that particular defendant failed to take the stand?

A. No, sir.

Q. In other words, the question of the truthfulness or the dishonesty of a particular witness is dependent wholly on your measure of the honesty of that person and is completely independent of whether or not a particular defendant testifies in the case?

A. Yes.

Q. Is that correct?

A. Yes, sir.

Q. You understand, do you not, that a juror is the sole judge of the facts?

A. Yes, sir.

Q. And the implication of that proposition of law is clear to you?

A. Yes, sir.

Q. You are not beholden to anybody for a verdict one way or the other in the case?

A. No, sir.

Q. You understand also that although it is the obligation of a juror to participate in discussion with an open mind, with his colleagues in the jury room, that it is also his [fol. 815] obligation to adhere to his own individual opinion unless in consequence of reasonable argument and in consequence of the free working of his mind he elects to change his mind. Do you understand that?

A. Yes, I do.

Q. You understand that a juror may not be bullied by the fact that he happens to be in the minority?

A. Yes, sir.

Q. If he really reasonably entertains a doubt different from other jurors?

A. Yes, sir.

Q. And of course you also understand that not only does he have the right to entertain his own honest opinion as against everything except the persuasive arguments of other persons in the jury box with him, but certainly he cannot let that opinion be affected in any way by anything outside the case?

A. No, sir.

Q. You understand that?

A. I understand that, yes, sir.

Mr. Rosenthal: No challenge for cause.

Mr. Turkus: The juror is satisfactory to The People of the State.

Mr. Talley: Challenged peremptorily by the defense.

NATHAN JELIN, of 8313 Bay Parkway, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Mr. Jelin, do I pronounce your name correctly?

A. Correct.

[fol. 816] Q. 8313 Bay Parkway; is that Bensonhurst?

A. That is right.

Q. Have you lived there a number of years?

A. Six years.

Q. And prior to that time in what section of Brooklyn did you live?

A. Flived in East Flatbush before. Before that I lived in Brownsville.

Q. I suppose you know some of the old Brownsville residents?

A. Very few.

Q. When you tell me about Brownsville, you sort of put me on my guard that there is something I ought to know about it.

A. Only I belong to an organization out there, fraternal organization.

Q. What is the name of it?

A. Young Fellows Lodge, Independent Order Brith Abraham.

By the Court:

Q. That is the leading Jewish benevolent organization in America, isn't it?

A. I believe it is.

Q. What is your business?

A. I was in the post office.

Q. What branch?

A. In the old General Office in New York, clerk in the post office.

Q. When did you retire?

A. Eight years ago.

Q. How many years were you there as a clerk?

A. Thirty-five years.

Q. And is that sorting clerk, or were you at the window?

A. I was assorting and also doing directory work.

Q. In your position as a sorting clerk, you had to have [fol. 817] quite a memory development?

A. Oh, yes.

Q. To know just how to place the stuff you sorted?

A. That is right.

Q. In hundreds of different ways?

A. Boundary lines, and so on.

Q. In a fraction of a second?

A. Oh, yes.

Q. So apparently you developed a mind that grasps detail quickly?

A. Oh, yes.

By Mr. Turkus:

Q. I did not hear all of the answers that you made, Mr. Jellin, because, of necessity, in responding to the Court your head was turned in that direction, but did I hear this much, at least, that you at one time were connected with the United States Government?

A. That is right.

Q. In its Post Office Department?

A. Right.

Q. As a clerk in the mailing division?

A. No, in the City division. We used to distribute City letters. The mailing division is outside the city. There is a difference there.

The Court: The sorting goes according to sections, and the moment that address is seen the clerk must know precisely where it is and where to throw the letter or parcel. That is why I asked him these questions, as having a bearing on his ability to remember details of evidence and to get them quickly.

Q. In other words, you got the mail in this City division [fol. 818] and you look at the address and then dump it in the particular pile it has to go to be sent out?

A. In the box where it belongs.

Q. That is set up in boxes?

A. That is the idea.

Q. How many years were you in the post office?

A. Thirty-five years.

Q. And you retired after thirty-five years of service?

A. That is right.

Q. And I take it that you are presently on a pension of the United States Government?

A. That is right.

Q. You specifically directed my attention to the fact that you lived out in the Brownsville district of Brooklyn at one time.

A. That is right.

Q. Have you taken any special interest in activities in Brownsville?

A. None whatever.

Q. And the Friends Lodge of the I.O.B.A., where does that meet?

A. I believe they meet at Rochester and Lincoln Place now. I have not gone to meetings in years. I am a good dues paying member, and that is all.

Q. I happened to be there one night myself, and that is what I was going to ask you about. At least you have not been there in the last two years?

A. I have not been to a meeting in ten years, probably.

Q. Do you maintain any friendships in that Brownsville-East New York area of any kind, nature, or description?

A. None whatever.

[fol. 819] Q. When the investigation of Judge O'Dwyer commenced, did you read of it because it affected certain individuals?

A. I paid very little attention to it. I paid very little attention to it.

Q. In any wise, have you had any connection with people in the garment business?

A. None.

Q. Or in the clothing industry?

A. No.

Q. Or with anyone associated or connected with the Brooklyn waterfront?

A. No.

Q. How many years have you been retired, Mr. Jellin?

A. Almost eight years. November 1st will be eight years.

Q. Do you have any outside interest at night, for example, do you belong to any particular societies or do you devote yourself to any particular hobby?

A. No.

Q. You are just taking it easy?

A. That is all.

Q. What newspapers do you customarily read?

A. I usually read the *Times*.

Q. The New York *Times*?

A. New York *Times*.

Q. That is the morning paper. Do you customarily read an evening paper?

A. I do not.

Q. Without prying into your actual age, because I am not concerned with that, but there is an age limit. You know what it is. There is no danger of us reaching that?

A. The reason I retired was because there was a special law passed when Mr. Roosevelt came into office allowing [fol. 820] men who are thirty years and over to retire if they wished to, and I availed myself of that opportunity. I was only fifty-five at the time.

Q. In connection with your duties in the post office, did you ever have occasion to appear as a witness for the United States Government against people employed in the Post Office?

A. No.

Q. Or in any wise do any business with the United States District Attorney or any F. B. I. men?

A. No.

Q. Or any post office inspectors?

A. No.

Q. Since your name appeared on this jury panel did anybody speak to you about the case?

A. No.

Q. Have you heretofore had prior jury service?

A. Yes.

Q. In what court?

A. I have had service in City Court here in this building and in the United States in the Federal Court.

Q. In the United States District Court, was that service in connection with a criminal case?

A. Yes.

Q. And did the case in which you sat go to a conclusion?

A. Yes.

Q. And did you hear the instruction of law from the Judge.

A. Oh, yes.

Q. Has that been recent?

A. Yes, this year.

Q. Were any of the counsel who represent the defendants in this case in the case in the Federal Court which you handled as a juror?

A. No.

[fol. 821] Q. And you had the benefit of listening to the Judge's instruction on the law?

A. Yes.

Q. And that has been as recent as this year?

A. Right.

Q. And heretofore you have had service in the City Court right in this building?

A. Yes.

Q. In those cases did you have instructions of law from the Judge?

A. Yes.

Q. Have you at any time been a Grand Juror in the United States Court?

A. No.

Q. Or in the County Court?

A. No.

Q. Have you heretofore served as a juror in any criminal case in the County Court?

A. No.

Q. May I proceed with the understanding that you are in sympathy with law enforcement?

A. Yes.

Q. There are nine lawyers here who represent these defendants at the bar. Do you know any of them?

A. No.

Q. Do you know anyone connected with their law offices in any capacity?

A. No.

Q. You have heard me say their names to other talesmen who occupied the chair that you do?

A. Yes.

Q. And you are familiar with the names and with the men that are in the court-room?

A. Yes.

Q. And you know none of them. Are you acquainted intimately with any member of the bar who tries criminal case as a specialty?

A. No.

[fol. 822] Q. In the Federal Court in which you served

as a juror, did the Judge comment upon the evidence to the jury?

A. Yes.

Q. In the Federal Court do you understand that that is the law, that a Judge may comment upon the evidence and express his belief or opinion with regard thereto?

A. He told us the law in the case, that is all.

Q. But did he express any opinion as to the evidence in the case?

A. Not that I heard of.

Q. Who was the judge?

A. Judge Campbell.

Q. Well, at any rate, my understanding of the Federal procedure is that a Judge may comment on the evidence, and I wanted to know whether the Judge did in the particular case that you served, whether he passed any opinion on the evidence.

A. I did not understand it that way.

The Court: As a practical matter, they don't.

Mr. Wegman: Some of the judges do, but Judge Campbell very rarely does.

The Court: Judge Campbell is old fashioned. He was a County Judge of this court.

Q. What I wanted to have clearly understood, that in the State Court system, at least, as distinguished from the Federal Court system, the judge does not comment upon the evidence or whether or not he believes or disbelieves a specific witness. That is a job the jury does here. The Judge tells them the law, they apply the law to the facts. So [fol. 823] I wanted to make sure that as we went along here we did not go along with any different notions. That was the reason for the inquiry.

Did you make the acquaintance of Mr. Geoghan when he was District Attorney, or any member of his staff?

A. No.

Q. Is there any member of your family who is a lawyer?

A. No.

Q. And the correct spelling is with a "J"?

A. Correct.

By the Court:

Q. Are you a family man?

A. Yes, sir.

Q. You live corner of 84th Street?

A. Right on the corner. New House.

Q. Miss Morrissey had a house across from you. It was torn down and an apartment built.

A. Yes.

Q. Do you belong to any organization there in Bensonhurst?

A. No organization.

Q. Do you attend any meetings at that public school that is corner 85th Street and 21st Avenue?

A. No, sir.

Q. You are not active politically?

A. Well, very little. I am a member of the County Committee; that is all. I am not very active.

Q. You are the election district captain?

A. I am not the captain; I don't belong to the club even.

Q. If you are not the captain and at the same time you are a member of the County Committee, I know what party you belong to.

By Mr. Turkus:

Q. Your job is an elective one. You are elected every [fol. 824] year?

A. Last year I was elected.

Q. Your name appears on the ballot?

A. That is it.

Q. You happen to know that your name was on the ballot?

A. I know it. I was told after it was put on. I did not even know it was going to be put on.

By the Court:

Q. Does that mean that you have a gathering place near by where you meet people and become popular?

A. No, I just happen to know who used to be the captain. I believe. Her brother is the captain.

Q. The Sutherland Club is only four blocks from you?

A. I know that. It is on Bay 25th Street. I did not even know I was going to be put on the committee. I was on it before I knew it.

By Mr. Turkus:

Q. I think the Judge was trying to inquire how you got on the County Committee.

A. I do not now how I got on it either. I was put on without being asked.

Q. I take it that Judge Taylor was trying to find out whether you attend some political club in the neighborhood.

A. I don't, very seldom; maybe once a year I might go around there.

Q. You have been around, Mr. Jellin. You know that the County Committee is usually made up by the captain?

A. I know it.

Q. Do you know the captain? I think that is possibly [fol. 825] what the Judge wanted to find out.

A. That is it.

Q. Was the captain related to you or a close friend?

A. No ways related to me.

Q. Close friend?

A. Just I happen to know her, that is all.

By the Court:

Q. Do you go to the club often enough to get really well acquainted?

A. No, I do not.

Q. Just to an occasional meeting?

A. Occasional meeting.

Q. Between times you do not go to play cards?

A. Never.

By Mr. Turkus:

Q. I think I understand what puzzle is in the Judge's mind. Of course, nobody can be a mind reader, but you told us that you were retired?

A. Yes.

Q. So that you do nothing all day. How do you kill time at night?

A. I am home.

Mr. Talley: I object to that. That is definitely an improper question.

Mr. Turkus: I have withdrawn it.

Mr. Talley: It should not be asked. It is nobody's business, neither the District Attorneys nor the Court's, nor anybody else's. This talesman should be protected against questions like that.

Mr. Turkus: Your Honor, I withdraw the question. Judge Talley tries to ingratiate himself with some body here in support of Constitutional rights. I was sorry after I asked the question and I withdrew it.

[fol. 826] Mr. Talley: I do not have to make any speeches to ingratiate myself.

The Court: The talesman has answered the question. He says he stays home.

Mr. Talley: What becomes of my objection?

Mr. Turkus: What became of mine?

Mr. Talley: I don't withdraw it. I still press it.

Mr. Turkus: He still stays home.

Q. Mr. Jellin, do you understand the spirit in which counsel on both sides intend to ask these questions?

A. I know it.

Q. Possibly in the zeal of advocacy we may overstep the bound of propriety, but you understand it is not to be offensive, nor in any wise to embarrass any juror. Is that correct?

A. Yes, sir.

By the Court:

Q. Are you an election district inspector?

A. No, sir.

Q. A poll clerk?

A. No, sir.

Q. A ballot clerk?

A. No, sir.

By Mr. Turkus:

Q. Are you in any wise active politically on Election Day or Primary Day?

A. No, sir.

Q. Do you know Judge O'Dwyer, the District Attorney of the County?

A. I do not.

Q. Do you know any member of his staff?

A. No, sir.

Q. By virtue of your service with the United States Government, [fol. 827] did you not know the United States District Attorney or any Assistant United States Attorney?

A. I do not.

Q. I take it that when you served in the Federal Court the Judge charged on the doctrine or the presumption of inno-

cence; is that correct? If instructed here by the Judge that defendants are presumed to be innocent and that the presumption starts with them when they come into the courtroom and stays with them even while the jury is figuring the case out, and it is overcome when The People establish guilt beyond a reasonable doubt, will you follow the instruction of law?

A. Yes.

Q. And will you give the defendants every benefit of the presumption of innocence, as Judge Taylor tells you it should be applied in the case?

A. Yes.

Q. Now with respect to the law of reasonable doubt: Did you hear that discussed in the Federal Court?

A. Yes.

Q. And in that case did Judge Campbell charge on the doctrine of reasonable doubt?

A. Yes.

Q. If instructed on the doctrine of reasonable doubt here by the trial judge, will you take his interpretation of the law?

A. Yes.

Q. And endeavor conscientiously to apply it to this case?

A. Yes.

Q. And the facts of the case? I take it you will have no difficulty in following the instruction that The People must establish guilt beyond a reasonable doubt; is that correct? [fol. 828] A. Yes.

Q. You say you customarily read the *New York Times*?

A. That is right.

Q. Do you read any other paper?

A. No other paper.

Q. Have you read any articles in connection with Judge O'Dwyer's investigations?

A. No.

Q. Have you heard the name of Lepke, for example?

A. I have seen the headline.

Q. More than headlines; have you read any articles?

A. I read a few of the items, the news items, but I never paid very much attention to it.

Q. In all, how many articles would you say you have read?

A. I read the news items in the *Times*, and they don't give much space to it.

Q. Did you read other names in those articles?

A. Probably one or two other names.

Q. Is the name of Harry Strauss, alias Pittsburgh Phil, familiar from newspaper reading?

A. No.

Q. That of Harry (Happy) Maione?

A. No.

Q. Or Frank (The Dasher) Abbando?

A. No.

Q. Martin (Buggy) Goldstein?

A. Only what I have heard in this court here; that is all.

Q. I am not referring to that; I am referring to newspaper reading.

A. No, I have not read any of those articles.

Q. Then the only name that you have read about has been [fol. 829] the name of Lepke, is that it?

A. It is the only one that I have taken particular notice of.

Q. And how recent was that that you read those articles?

A. The other day, only a few days—within the last few days; before the notice, I don't think I read it more than once before.

Q. So that your newspaper reading has been devoted to reading of the case since you received the notice?

A. That is it.

Q. You remember what you read?

A. Some of the things I read.

Q. I mean, you remember what you read about the name Lepke?

A. Yes.

Q. You read about that because you had an interest to read about it; isn't that right?

A. That is just it, exactly.

Q. And so what you read about that name Lepke was of interest to you. And you remember what you read about it?

A. Some of the things I remember.

Q. Of course, you never read about the name Lepke before you got your notice as a juror?

A. No.

Q. You first began to read about Lepke after you got the notice that you might be a juror; is that correct?

A. Yes.

Q. Then what you read about him you read with interest, didn't you?

A. Yes.

Q. And it has remained in your mind?

A. Yes.

Q. Has it made an impression upon your mind?

A. No.

Q. Well?

A. Just as being interested in it now, that is all.

[fol. 830] Q. That is what I am trying to talk about. If I understand you correctly, the name of Lepke had no significance to you by way of newspaper reading all your past experience until you got a notice that you might be a juror in the case?

A. Right.

Q. And then you started to read about that name Lepke?

A. That is right.

Q. So that obviously you had an interest in reading about that individual?

A. That is right.

Q. And your reading has been recent, so that the facts of what you read are still fresh in your mind, isn't that right?

A. Right.

Q. Hasn't that reading that you have done, with this interest that you have displayed in the article, left you with some impression?

A. I got the impression that such is the accusation against him; that is all, but—

By the Court:

Q. Have you formed any idea as to whether the defendants are guilty or innocent?

A. No, I have not. I have kept that in mind.

By Mr. Turkus:

Q. You mean that you conscientiously kept in mind to—

A. That is right.

Q. —to avoid forming any opinion as to guilt or innocence?

A. That is it.

Q. Of course, when you sit down here you remember what you read, don't you?

[fol. 831] A. Yes.

Q. That is going to stay in your mind, isn't it?

A. Yes.

Q. And that will stay with your mind as the case progresses from day to day, won't it? Would it require some evidence on the part of a defendant to remove that impression that you have about that particular name?

Mr. Rosenthal: I object to it on the ground he said he had no impression.

The Court: That is what he said.

A. That is what I said.

Mr. Turkus: Mr. Rosenthal has made an objection.

Mr. Rosenthal: The Judge said that is what he said.

Mr. Turkus: I have a right to be heard, too. Mr. Rosenthal has made an objection that does not even apply to his client.

The Court: Read the question.

(Pending question read.)

By the Court:

Q. What name is that?

A. The name of Lepke.

The Court: He says he has no impression.

Mr. Turkus: He told me he did.

The Court: You misunderstood him. All right.

Q. Have you any opinion as to guilt or innocence?

A. I have no opinion.

Q. Is the impression you have prejudicial?

A. No, sir.

[fol. 832] The Court: There is nothing to remove.

By Mr. Turkus:

Q. I just want to ask this: Didn't you tell us before Judge Taylor questioned you, Mr. Jellin, is it that you had an impression about this name of Lepke that would stay with you from day to day as the trial went on?

A. I simply read the story in the paper that he was accused of a certain crime.

Q. I had come to the point with you, did I not, where you had told me in response to a question that from what you have read of Lepke after you got your notice and you were

interested in that name, that that impression would stay with you from day to day as the trial went on, at least that is the way I understood it.

Mr. Climenko: I object to it, if your Honor pleases, upon the ground that it assumes a state of facts not consistent with the answer. As I heard that answer, he said in response to the leading question from Mr. Turkus that he had an impression, by which I thought he meant a recollection, of a newspaper article which might stay with him. He never said he had an impression as to the defendant.

The Court: The word "impression" is vague. Objection is sustained.

Mr. Turkus: Your Honor, may we not read the record of the testimony given?

The Court: After all, Mr. Turkus, that is a matter the [fol. 833] other side should properly develop.

Mr. Turkus: That may be true, but as a prosecutor I still have the duty of getting a fair and impartial jury.

The Court: I understand that.

Mr. Barshay: We appreciate that.

The Court: Just the same, the defense does object to the question.

Mr. Turkus: That is what makes me very suspicious.

Mr. Talley: Suspicious of what?

Mr. Cuff: I think that is not a proper statement, Judge.

Mr. Talley: What are you suspicious about?

Mr. Turkus: I am suspicious of you for objecting.

The Court: Go ahead.

Mr. Talley: I ask the Court to instruct the District Attorney not to make statements of that kind.

Mr. Turkus: You invited it.

Mr. Talley: Absolutely uncalled for. Nothing that has happened justifies that statement.

The Court: I suggest that you both forget about it at once and proceed with the questioning. We must avoid friction.

By Mr. Turkus:

Q. Mr. Jellin, as you sit in the jury box now, having read about the name Lepke since you got a notice, is there anything that you have read in the newspaper that persists in your mind now, as you are seated in the jury box?
[fol. 834] A. Nothing in particular.

Q. What did you say?

A. Nothing in particular, only such an accusation is made against the man.

Q. Is that the only thing that stays in your mind from reading the article?

A. That is the only thing that stays in my mind.

Q. Is there anything that you have read that has made any prejudice in your mind against that particular individual?

A. No.

Q. Or against anybody in the case?

A. No.

Q. Did you read any newspaper articles in which any other name was mentioned, any other defendant's name?

A. Weiss and Capone. That is the only three that I can remember.

Q. They are the only three on trial now?

A. Yes.

Q. Is there anything that you read about Weiss that leaves an impression in your mind?

A. No.

Q. Or anything that you read about Capone?

A. No.

Q. Was that reading in connection with those two defendants, like the name of Lepke, devoted after you received your notice?

A. That is right.

Q. Do you know any official or any officer connected with the Amalgamated Clothing Workers of America?

A. No.

Q. Have you any relatives who are immediately employed in the garment district?

A. No.

Q. Is there any close relative employed in the clothing [fol 835] district?

A. No.

Q. Or anywhere in the garment center in Manhattan?

A. No.

Q. Clothing trucking?

A. No.

Q. Trucking of any kind, nature or description?

A. No.

Q. Is there any significance in the name of Potofsky?

A. No.

Q. An official of the Amalgamated Clothing Workers of America?

A. No.

Q. Any significance in your mind to the name of Murray Weinstein, manager of Cutters Union, Local 4, of the Amalgamated?

A. No.

Q. Or that of Samuel Katz?

A. No.

Q. The business agent of that local?

A. No.

Q. Did you ever hear the name of Bruno Belia, an organizer at the home office of the Amalgamated?

A. No.

Q. That name has no significance at all? Are you intimate socially with anybody who is in business in the garment district in Manhattan?

A. No.

Q. Or the clothing district?

A. No.

Q. Is the name of Salvatore Marazzano familiar?

A. No.

Q. Or the name of Philip Orlofsky, a one-time manager of the Cutters Union, Local 4, of the Amalgamated?

A. No.

Q. Is the name of Max Silverman a familiar one?

A. No.

Q. Or that of Wolfie Goldis?

A. No.

Q. Do you know anybody in any Teamsters Union or Flour Truckmens Union?

A. No.

[fol. 836] Q. Is there any significance to the name of William or Willie Alberts, a one-time bondsman?

A. No.

Q. Or the name of Emanuel Buchalter?

A. No.

Q. Or Phillie Kewas or Phillie Buchalter?

A. No.

Q. Any significance to the name of Bellanca and Tosca?

A. No.

Q. Or the name of Terry Burns or Abie Slabo?

A. No.

Q. Or Hyman (Curly) Holtz?

A. No.

Q. On what street did you live in Brownsville, Mr. Jellin?

A. Osborne Street.

Q. Osborne and where?

A. Between Sutter and Belmont.

Q. Between Sutter and where?

A. Sutter and Belmont. That is quite a number of years ago.

Q. How far would that location be from Sutter and Bradford?

A. Oh, fully a mile away, I think.

Q. Are you familiar with Sutter Avenue?

A. Yes, some parts of it.

Q. And are you familiar with the railroad cut down at Van Sinderen and Livonia Avenues?

A. Yes.

Q. Where that I. R. T. and B. M. T. station is?

A. Yes.

Q. A railroad cut?

A. Yes.

Q. And the crossing over to Junius Street?

A. Yes.

Q. Are you familiar with Linton Park?

A. No.

Q. A little park around Blake and Sutter?

A. I don't think I ever went around that way at all.

[fol. 837] A. I don't think I ever went around that way at all.

Q. Do you recall whether or not you read anything about the killing of Joseph Rosen in a little candy store on Sutter Avenue some four years ago?

A. I don't recall it.

Q. As a matter of fact, it is some five years ago now.

A. I am out of Brownsville six years, more than that--fourteen years.

Q. While you were in Brownsville did you ever hear the names of Martin (Bugsy) Goldstein or Pittsburgh Strauss?

A. No.

Q. Abie Reles?

A. No.

Q. How many years did you live in Brownsville?

A. I lived there ten years, from 1917 to 1927.

Q. Do you know where Saratoga and Livonia Avenue is?

A. Yes.

Q. A candy store on the corner?

A. There is more than one there I think.

Q. But one specially known in Brownsville?

A. I did not take particular notice of anyone in Brownsville while there.

Q. Well, haven't you heard about a particular candy store in Brownsville at the corner of Saratoga and Livonia Avenue as a result of your ten years of residence in the Brownsville District?

A. No.

The Court: Rose Gold. Does that bring anything to you?

The Witness: It does not.

Q. Do you know where Sackman and Livonia is?

A. Yes.

Q. After ten years of residence in the Brownsville area, [fol. 838] are you sure that you have no familiarity with any of the names I have discussed with you?

A. I do not. I used to mind my own business, go to work from there and come home.

Q. Did you hear anything about certain individuals in that area?

A. No, I did not.

Q. Didn't you ever hear any discussions, for example, about Abie Reles?

A. No.

Q. Or Martin (Bugey) Goldstein?

A. No.

Q. Or Strauss?

A. No.

Q. Or Abbandando or Maione? When you lived in that Brownsville district did you do business in the various stores there in Brownsville?

A. On Pitkin Avenue, Heyward store, Heyward's Clothing.

By the Court:

Q. Osborne is how far from Rockaway?

A. Two blocks.

Q. Two blocks east?

A. Yes, east, that is right.

Q. That is quite a congested locality, isn't it?

A. Oh, terribly congested.

Q. That is the reason you got out?

A. Well, I moved there—at the time I moved there I didn't expect the trouble we would have there. My mother-in-law was very sick there for about eight years, and my wife took care of her. I intended to get out any time, but I had to stick there.

Q. You stuck because she was too sick to move?

A. My mother-in-law finally died there.

[fol. 839] Mr. Cuff: Can't hear a word of it, Judge.

The Court: He stuck there for eight years because his mother-in-law was too sick to move, and after she died he moved because the locality was too crowded. He used the word "terribly."

By Mr. Turkus:

Q. Have you a family? And by that I mean have you children?

A. Yes, I have a married daughter.

Q. And was she residing at home while you were a resident of Brownsville?

A. Yes.

Q. You did business in the local stores, didn't you?

A. Yes.

Q. With the local merchants?

A. Yes.

Q. And are you sure that in the ten years of residence you never heard discussions of any names that I mentioned?

A. Never heard.

Q. Did you use that subway station at Van Sinderen and Livonia?

A. At Sutter and Livonia, at Sutter and I do not know what street is there. There is really only a short street there.

Q. How far was Saratoga and Livonia Avenue from your residence?

A. I will tell you, that station I used was the Rockaway and Livonia.

Q. And how far was Saratoga and Livonia from Rockaway and Livonia?

A. Oh, it is one station nearer to New York.

Q. So they are only one station apart? It is a matter [fol. 840] of a few blocks?

A. That is right.

Q. And Sackman and Livonia is still closer, isn't it?

A. No, it is further away.

Q. One block further?

A. No, Sackman is towards East New York.

Q. That would be one block further?

A. More than one block, a good many blocks, I think.

By the Court:

Q. How many blocks are there between Saratoga and Rockaway there?

A. I think it is about four blocks, four or five blocks.

Q. Can you mention the streets?

A. I don't think I could.

By Mr. Turkus:

Q. Were you living in the Brownsville district at the time you were working for the Post Office?

A. Yes.

Q. You did have occasion to patronize the local stores, as you said?

A. Yes.

Q. And you had neighbors there that you spoke to?

A. Yes.

Q. Were you a member of any organization at that time in that Brownsville area?

A. No, only the fraternal organization.

Q. And you met in a fraternal spirit with other members of the organization who lived in the Brownsville district?

A. I very seldom went to meetings, very seldom. I am a member of it thirty years. I don't believe I have attended ten meetings in that time.

[fol. 841] Q. Mr. Jellin, are you definitely sure that in the ten years you lived in Brownsville you never heard the name Rosie Gold?

Mr. Talley: If your Honor please, that has been asked and answered at least six times.

Mr. Turkus: Oh, no, it has not.

Mr. Talley: We will never progress if your Honor is going to permit this repetition and this type of questions.

and I respectfully object and respectfully submit that there has to be some curtailment of these useless questions.

By the Court:

Q. Have you dealt in any of those stores on the corner of Saratoga and Livonia?

A. Saratoga and Livonia, no. There was only a bakery there, probably I went into, near the corner.

Q. No candy and newspaper store?

A. No.

By Mr. Turkus:

Q. Did you go to moving pictures in the neighborhood of Saratoga and Livonia?

A. Yes.

Q. As you walked by the corners there to and from the moving picture—

A. Yes, I walked by there.

Q. Did you ever hear the name of Vito Guarino?

A. No.

Q. Did you ever hear the name of Al Strauss?

A. No.

Q. Did you ever hear the name of Tiny Benson?

A. No.

Q. When you walked to the moving pictures did you see men congregated on the corner of Saratoga and Livonia Avenue?

[fol. 842] Mr. Talley: That is objected to.

A. That was not my station, in the first place.

Mr. Talley: No bearing on the qualifications of this salesman.

The Court: Overruled.

By the Court:

Q. Did you ever notice people grouped right there?

A. I did not pay much attention to it.

By Mr. Turkus:

Q. Now then, there is nothing about your residence in the Brownsville area of Brooklyn that would in any wise affect your judgment in this case?

A. No.

Q. Is there anything concerning your residence in Brownsville that I have not elicited by questioning which would affect your qualification to sit as a juror?

A. Nothing.

Q. Have you any bias or prejudice against the use of accomplice testimony?

A. No.

Q. Do you know what an accomplice is?

A. Yes.

Q. Did you have any knowledge of an accomplice testimony prior to your being seated here in the box and listening to questions being asked other prospective jurors?

A. Yes, I have.

Q. Was that gathered from your Federal Court experience?

A. No.

Q. Newspapers?

A. I read all things like that, read books and so on.

[fol. 843] Q. Law books?

A. No, other books.

Q. You mean books relating to an account of the apprehension and prosecution of criminals?

A. That is right.

Q. Have you read such type of literature with any degree of interest?

A. Sometimes as a matter of pastime, that is all.

Q. And were those books written by prosecuting officials and officers of the Police Department?

A. No.

Q. Were they books or pamphlets issued by some law enforcement agencies?

A. No.

Q. What type of books were these that you read?

A. Like detective stories and stuff like that, you know.

Q. You mean the popular magazines that you get on the news-stands?

A. No, I never read that?

Q. At any rate, from whatever you have read by way of accomplice, has that given you any notion of the law with respect to accomplices that would in any wise handicap you from taking the law from the Judge?

A. No.

Q. Do you have any feeling against accomplice testimony that would cause you to reject it no matter what the circumstances were?

A. No.

Q. Do you have any prejudice against the prosecution in which that type of testimony is employed?

A. No.

Q. Have you read anything in connection with the O'Dwyer investigation in any of these books that you have read?

A. No.

[fol. 844] Q. Were those books in connection with accomplice testimony?

A. No, not particularly; I just recall reading something of that kind.

Q. Is there any bias on your part or any prejudice on your part against the prosecutor of the county for using a coparticipant in the commission of a murder against the other defendants in the case?

A. No.

Q. Will you expect the testimony of an accomplice to be supported by other evidence?

A. I want it to be corroborated.

Q. Of course, you will look at the testimony of an accomplice with care and caution?

A. Absolutely.

Q. And you will consider the character of such an individual?

A. Yes.

Q. You will consider his associates in life?

A. Yes.

Q. His past acts of commission of crime and misconduct?

A. Yes.

Q. The life of crime which he has led in the past and all of the exploits that he has committed; is that correct?

A. Yes.

Q. You will look at that kind of testimony carefully and with caution?

A. Yes.

Q. You won't arbitrarily reject it because it emanates from a source that you don't like; is that correct?

A. Correct.

Q. Is your state of mind such that you feel that even a bad man, even a criminal, even one whose past life has been steeped in crime, can sometimes tell the truth?

A. Oh, yes.

[fol. 845] Q. That is going to be your job if selected as a juror, to find out whether that individual that you are hearing in the court-room who is an accomplice is telling the truth—right?

A. Right.

Q. In weighing all of those considerations which are adverse to the credibility of an accomplice, namely, his bad character, his commission of crime, his past associations with criminals, will you also weigh all the other surrounding circumstances that may affect the believability of an accomplice's testimony?

A. Yes.

Q. Is your state of mind such that you understand that sometimes criminals fall out with one another and then tell?

Mr. Rosenthal: I object to the question.

The Court: Sustained.

By the Court:

Q. Would these names refresh your recollection of the streets between Saratoga and Rockaway: Douglas Street?

A. Yes.

Q. Herzl Street?

A. Yes, sir.

Q. Amboy?

A. Yes, sir.

Q. Hopkinson Avenue?

A. Yes.

Q. Bristol?

A. Yes.

Q. Chester?

A. That is right. Six blocks between Rockaway and Saratoga.

Q. Down towards Pitkin Avenue always Kings Highway: is that right?

A. That is right.

[fol. 846] By Mr. Turkus:

Q. Directing your attention now at this time to the name of Irving Feinstein, is there anything familiar to you about that name?

A. No, sir.

Q. Did you read anything in the press about Irving Feinstein—

Mr. Barshay: I object.

Mr. Turkus: I have not finished the question.

Mr. Barshay: Go ahead.

Q. —who was at the corner of Saratoga and Livonia Avenue shortly before some incident occurred?

Mr. Barshay: I object to it, your Honor.

The Court: Sustained.

Mr. Barshay: It has absolutely no bearing in this case.

The Court: It is not a question of having bearing, but I think that going further than the name in the presence of other members of the panel is inadvisable.

Mr. Turkus: I did not mention any specific occurrence.

The Court: I would not even hint at it.

Q. From your past connection in that Brownsville area, does the name of George Rudnick have any significance to you?

A. No.

Mr. Talley: Your Honor, he has not been in Brownsville in fourteen years.

The Court: But he has a good memory.

[fol. 847] Mr. Talley: Why not come down to the present time, not waste time asking that kind of question.

The Court: He has trained memory and orientation extraordinary. We will have to be true to our promise.

Mr. Talley: Can't we finish with this salesman today?

The Court: I am sorry, we cannot do any more today. It is much easier for all to try a case where progress is made, and so far it has been negative. I certainly hope that on Monday there will be that first row filled.

(To talesmen) Come back at ten o'clock on Monday morning, gentlemen. Please remember the previous admonition, not to read or talk or listen to the radio about the case.

(Whereupon an adjournment was taken to September 29, 1941, at 10 a. m.)

[fol. 848]

Brooklyn, N. Y., Sept. 29, 1941.

Trial Resumed

(At the direction of the Court, the clerk called the following talesmen to sit in the jury box: Thomas E. Finn, No. 2626; Russell Olson, No. 2672; Chester Prentice, No. 2791; Harry Sillett, No. 2759.)

The Court: Wednesday (October 1st) will be a Jewish holy day, so there will be no court. The experience of the last two weeks shows that the number who are already in the box will be sufficient to occupy the attention of the Court for the next two days, so the talesmen who are not in the box will be excused until Thursday morning (October 2nd) at ten o'clock.

NATHAN JELLIN, No. 2643, residing at 8313 Bay Parkway, Brooklyn, New York, examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. I think you said before recess that you lived with your wife's people and that they were in some business in Brownsville?

A. Yes, at that time we had our own apartment.

By the Court:

Q. What business was your mother-in-law in?

A. My father-in-law I think used to buy clothing and sell it, I believe.

[fol. 849] Q. Second-hand clothing?

A. No, sir, all kinds of merchandise. I lived in the upper flat and he lived in the lower floor in his house.

Q. He is alive?

A. Yes, sir, he is still living.

By Mr. Turkus:

Q. I understood you to say you lived together.

A. No, sir, I had a separate apartment in the same house.

Q. I understood you to say Friday that you lived for eleven years in Brownsville.

A. Ten years.

Q. When you left there your mother-in-law became sick and could not move away until she died?

A. That is right.

Q. So that time she was dependent upon you?

A. No, sir, but my wife took care of her.

Q. During the time she took care of her, where was your father-in-law's place?

A. I don't believe he had any place of business; his business address was where he lived.

Q. He used his place of business for an office?

A. Yes, sir.

Q. Did he have a business card?

A. I don't believe he did.

Q. You mean he went around buying at auctions and selling?

A. Yes, sir.

Q. He did not carry merchandise in his pocket?

A. No, sir.

(A short recess was taken)

Q. I believe I understood you to say, you said to Judge Taylor, that among the other business that this gentleman conducted was clothing; is that correct?

A. It was sometimes clothing, whatever he happened to [fol. 850] buy up, dry goods mostly, though.

By the Court:

Q. Second hand?

A. No, it was not second-hand. He would buy up lots of dry goods and he would sell it to the storekeepers in the neighborhood.

Q. You do not know where he kept his stock?

A. No, I do not.

Q. Or who he bought it from?

A. No, I don't.

Q. Or who he sold it to?

A. No.

Q. Did he have a delivery wagon?

A. No, sir.

Q. Any bill-heads?

A. I never even saw a bill-head.

Q. Any employees?

A. No, sir.

By Mr. Turkus:

Q. Was he buying up job lots of clothing and other goods?

A. It was very little clothing. I don't think I ever saw clothing. I just happened to mention that, but mostly dry goods it was.

Q. When the Judge first interrogated you about the business, the first word you mentioned was clothing.

A. Because there was a clothing store downstairs. It just entered my mind at the moment.

Q. Downstairs in this place where you lived in Brownsville?

A. Yes.

Q. The particular clothing that he dealt in, in the clothing that he dealt in, was that a job lot?

A. I don't think I ever saw him have any clothing at all. [fol. 851] It was mostly dry goods.

Q. Did he have a telephone?

A. No, he never had a telephone either.

Q. Was there a warehouse or a storage place for the goods he dealt in?

A. No, he bought small goods, you see, like toweling and other dry goods.

Q. What was his method of distribution in sale of the product?

A. He would go around to these storekeepers that sold these things and sell it to them.

By the Court:

Q. What was his first name?

A. Herman.

By Mr. Turkus:

Q. Did he deal with the local merchants in the Brownsville area and the East New York area?

A. Yes, I believe he did.

Q. And you both occupied portions of the same house?

A. That is right.

Q. Do you still live together with this gentleman?

A. No.

Q. Is he alive?

A. Yes, he is in Kings County Hospital now. He is a very sick man.

Q. Prior to the time he went to the hospital did he reside with you?

A. No.

By the Court:

Q. He did not move to Bensonhurst with you?

A. Oh, no.

By Mr. Turkus:

Q. Did he remain in this Brownsville area?

A. Yes, he still owns the house there too.

[fol. 852] Q. And have you and your wife visited there frequently since? This gentleman, I understood it was your wife's father?

A. That is right.

By the Court:

Q. Mr. Jellin, do you know the relation between in-laws living practically together, together in the same building, ten years ought to be such you would have some idea as to the manner in which that business was done, where he bought his stuff and where he sold it.

A. I never knew where he bought his stuff, nor where he sold it, for that matter.

Q. Was there any reason for not inquiring?

A. No reason at all.

By Mr. Turkus:

Q. As you explained to Judge Taylor, Mr. Jellin, the relationship between you and your wife's family was very close and intimate?

A. Yes, at that time.

Q. What kept you in Brownsville at that time was the desire of your wife to be of assistance to her mother, your mother-in-law?

A. That is right.

Q. And you and your father-in-law lived and shared the same house together for all these years that you lived in the Brownsville area?

A. Yes.

Q. You came in daily contact with him, didn't you? I suppose there were mutual meals prepared?

A. I don't get that.

[fol. 853] Q. I mean by that that you all ate at the same table, I take it.

A. Oh, no, we had a separate apartment.

Q. But with that arrangement where the mother-in-law was sick and your wife was helping her, didn't you and your father-in-law eat together?

A. No.

Q. He ate in his own place?

A. That is right.

Q. Did your wife make two meals?

A. That is right.

Q. One in one apartment and one in another?

A. Yes, she had double work.

By the Court:

Q. Did the people who wanted to sell these white goods use to come to his apartment and make the offers?

A. No, he used to go around to see them, I believe, most of the time.

Q. Was not merchandise ever stored in his apartment, do you know?

A. I have seen several bundles of dry goods there.

Q. Where did he keep that stuff?

A. In the house there.

Q. Yes, we understand that. What part of the house?

A. He used to keep it in the front room.

Q. Large bundles?

A. No, not very. It was only small lots.

Q. He had his samples there to show?

A. Not samples; he had small lots of goods. He would usually buy a lot of goods and then he would go out and sell it and that would be the end of that. It was not very big lots.

Q. Carried it under his arm?

A. No, he had it delivered. It was delivered by express [fol. 854] from New York.

Q. Then he would go out with samples?

A. That is it.

Q. Take the orders?

A. Yes.

Q. When he sold the stuff then the stuff would be delivered from the apartment?

A. That is right.

Q. Was that *is* regular way of doing business?

A. Years ago he used to be in the woolen business; before I even knew him.

Q. Whereabouts?

Mr. Climenko: I object to this line of questioning, if your Honor pleases.

The Court: Sustained.

By Mr. Turkus:

Q. Is the situation that this man dealt with various manufacturers and then got the quantities or job lots of the product and distributed it around to the various stores in the Brownsville-East New York area?

A. Yes, sir.

Q. Did you come in almost daily contact with him as a result of the close relationship?

A. Yes.

Q. Did you have any discussions with him as to conditions in Brownsville?

A. Not that I remember.

Q. In talking to Judge Taylor on Friday, you used the word that Brownsville was terrible, the conditions there were terrible; is that correct?

A. That is correct.

Q. Didn't you talk about the terrible conditions there with the members of your family?

A. Certainly.

[fol. 855] Q. And it was your desire to get out of that neighborhood as fast as you could?

A. Right.

Q. There were various things, then, that you knew that were going on in the neighborhood there; isn't that correct?

A. Yes.

Q. Various conditions with respect to various corners in the Brownsville-East New York section; is that correct?

A. Yes.

Q. And various persons who frequented or hung around those corners?

A. Certainly.

Q. I mean that was general neighborhood gossip about these people. Everybody in Brownsville spoke about them.

Mr. Barshay: Your Honor, I object to what people were saying in Brownsville about other conditions; has nothing to do with this case at all nor with any of the defendants.

The Court: Overruled.

Mr. Barshay: Exception.

Q. (Pending question read.)

A. I don't know what people you refer to.

Q. Just two minutes ago we got to the point where you said you were talking about with the various members of your family?

A. Yes.

Q. About the terrible conditions in Brownsville?

A. Yes.

Q. And East New York. And then we went along with that, and you said that was in reference to certain persons who frequented or hung around corners.

Mr. Rosenthal: I object to it on the ground that [fol. 856] Mr. Turkus is the one who said it. He put the answer into the juror's mouth.

The Court: That is true, but there was no objection, and he said "Yes." Overruled.

Mr. Rosenthal: Exception.

Q. Do you remember that?

A. Yes.

Q. Then I went one step further and I wanted to find out if it was general discussion with and other neighbors about those conditions and about those occurrences in Brownsville.

A. I am going to tell you what the conditions were over there.

Mr. Barshay: Just a second.

The Court: That may cause more trouble.

Mr. Turkus: I am going to apply a challenge for cause on implied bias. If he cannot go into what the conditions were, I press the challenge for cause on the ground of im-

plied bias. Here is a man who has lived in that area for all those years.

The Court: Try the challenge.

NATHAN J. JELLIN, of 8313 Bay Parkway, being duly sworn, testified as follows:

Mr. Barshay: Would your Honor accept the consent of all counsel to the challenge of this man?

The Court: You had better go through the formality.

Mr. Turkus: I will just go this far—

[fol. 857] The Court: Will his testimony be the same?

By Mr. Turkus:

Q. Mr. Jellin, now that you have been sworn on this voir dire, would you make the same responses to the same questions that I presented to you before you were sworn?

A. Yes.

Q. And would those answers be true?

A. Yes.

Mr. Rosenthal: No questions.

Mr. Barshay: No questions on anybody's part.

The Court: Sustained.

BENJAMIN PROTTER, of 772 Linden Boulevard, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. You look like a lawyer by the name of Mannie Protter. Is there any relationship?

A. That is my brother.

Q. Mr. Protter, your business is listed as that of a writer?

A. Yes, I have been in the real estate business, but not in this country.

Q. I cannot hear you.

A. I am a writer, but I also have been in the real estate business but not here; that was in Paris, France.

Q. Mr. Protter, what is the nature of the writings that you do?

A. European Political Affairs, European affairs, the political situation in Europe.

[fol. 858] Q. I have a head cold.

A. I have not got a very strong voice, either. I say that my writing has been completely on European affairs.

Q. And is it for newspapers in this city?

A. Mostly I have written for the *New Leader*. I have not written since I came back in July, 1940.

Q. Have you lived in Brooklyn for a number of years?

A. I have lived in Brooklyn for two years, and previous to my departure I lived in Brooklyn for about twenty years.

Q. I take it that you spent some time in France in the real estate business?

A. Yes, sixteen or seventeen years.

Q. And were you employed by some firm or in business for yourself?

A. In business for myself.

Q. The trestle board lists the address at 772 Linden Boulevard; is that correct?

A. That is correct except I am not living there right now. I am living in a hotel in New York, Hotel Maryland, 104 West 49th, since my return.

Q. Is 104 West 49th a legal residence of yours?

A. No, it is a passing residence.

Q. Have you got furniture at Linden Boulevard?

A. Yes, I have my clothing. I have not got my furniture here. I am living with my mother there.

Q. I am not prying. I have to be careful about jurisdiction.

A. There are two reasons why I am staying at the Maryland Hotel. When I came back my mother was not back [fol. 859] from the country so I went to a hotel and since then, having been called for jury duty, I thought it best to remain away until the question is decided.

Q. Do you consider 772 Linden Boulevard—

A. My legal residence.

Q. And is that a residence from which you regularly register and vote?

A. I do. I voted at the primary elections two weeks ago.

Q. And the residence at the hotel in Manhattan is only temporary?

A. Since September 4th, that is all.

Q. And you say you merely main- that for the—

A. Convenience.

Q. Until this question of jury duty is determined?

A. That's correct.

Q. Because there is no one at the Linden Boulevard address?

A. No, my mother is back since September 16th, but, having received notice of jury duty, I thought it best to stay away until the matter is settled.

Mr. Turkus: On the point of legality of residence, if it please the Court, I think the residence is sufficient in Brooklyn at this point.

The Court: There is no question before the Court.

By the Court:

Q. You are in East Flatbush?

A. I believe that is East Flatbush. That would be right [fol. 860] behind Utica Avenue, corner East 51st Street. It is a private, two-family house.

By Mr. Turkus:

Q. Can you tell me what street that 772 Linden Boulevard is near?

A. It is right on the corner of East 51st Street.

Q. Have you had any business connections or any social contacts of any kind, nature, or description with anyone in the Brownsville-East New York area of Brooklyn?

A. No.

The Court: Where did Harry Strauss live? Only a couple of blocks away from him.

The Talesman: I have no social connections in the Linden Boulevard area either.

The Court: Was not that 50th Street.

Mr. Turkus: I believe it was East 53rd or 55th Street off Church Avenue. Linden Boulevard and Church Avenue are about a block apart. Martense Street may come in between. It is in that neighborhood.

Q. Is the name of Harry Strauss familiar to you?

A. Not at all.

Q. Have you any contacts of any kind, nature, or description in the garment district?

A. None at all.

Q. Or in the clothing district of Manhattan?

A. No, I have a brother-in-law who is a traveling salesman for Michael Stern's office in Rochester. They have an office I believe at 200 Fifth Avenue.

Q. That is the Flatiron Building?

[fol. 861] A. No, that is across the way.

Q. Do you know what floor your brother has offices?

A. On the fourth floor at 50 Court Street.

Q. That is the brother who is a lawyer?

A. My brother-in-law. He has not got offices of his own. He is a traveling salesman for Michael Stern's, and Michael Stern's has offices in 200 Fifth Avenue.

Q. Do you know what floor their offices are on?

A. I could not tell you—the 8th or 9th Floor. I went there once because I got a suit of clothing through him at that office.

Q. Do you know how many years that brother-in-law has been in that location of 200 Fifth Avenue?

A. I could not tell you because he went with them after I left for France.

Q. Do you know how many years in all he has been there?

A. I could not tell you. He has been with them for considerable number of years, but the length of time I could not say myself.

Q. Would you say more than four years?

A. I think so, yes.

Q. And the office, was it maintained for the past four years at 200 Fifth Avenue?

A. I could not tell you from my own information. I know that office has been there for the last two years or more.

Q. Do you have any contact with anyone else who is in business in the clothing or garment districts of Manhattan?

A. No.

Q. Does this brother-in-law sell to the trade in New York City?

A. No, he has a Pennsylvania district.

[fol. 862] Q. And by that he sells men's clothing in Pennsylvania as a representative of this house?

A. That is it. He is away right now on a trip to Pennsylvania.

Q. Does your brother Marcy Protter reside at 772 Linden Boulevard?

A. No, he resides on Avenue G and I think East 21st Street. I have not got the exact address.

Q. He has an extensive clientele on the Brooklyn waterfront, hasn't he?

A. I do not know. My brother and I have not had contact with each other.

Q. You have discussed none of the business of the Brooklyn waterfront with your brother?

A. Never.

By the Court:

Q. What is your brother-in-law's name?

A. David Syman.

Q. He lives in Glenmore Road and Kenmore Place?

A. 772 Linden Boulevard.

Q. I thought you said Avenue G.

A. That is my brother.

Q. That is Glenwood Road and Kenmore Place?

A. Avenue J and East 21st. I may have his address on me. I could not say the exact address.

The Court: Go ahead.

By Mr. Turkus:

Q. Do you know anyone in the clothing trucking industry?

A. No.

Q. Or have you any contacts of any kind, nature or description with anyone in the clothing trucking industry?

[fol. 863] A. None at all.

Q. Do you know any official of the Amalgamated Clothing Workers of America?

A. No.

Q. Is there any familiarity to the names of Murray Weinstein, manager of the clothing cutters' union?

A. None at all.

Q. Local 4. Or that of Sam or Samuel Katz, a business agent?

A. None at all.

Q. Is there anything familiar about the name of Bruno Belia, an organizer?

A. None at all.

Q. Or the name of Salvatore Marazzano?

A. No.

Q. Is there any significance in your mind to the name of Philip Orlofsky, a one-time manager of Local 4 of the Cutters Union?

A. No.

Q. Do you know any officials of Local 240 of the Clothing Drivers & Helpers Union?

A. No.

Q. Is the name of Max Silverman familiar to you in any way?

A. No.

Q. Or that of Wolfie Goldie?

A. No.

Q. Any significance to the name of William or Willie Alberts, a one-time bondsman?

A. No.

Q. Or that of Emanuel Buchalter?

A. No.

Q. Or Phillie Buchalter?

A. No.

Q. Sometimes called Kowas? Any significance to the names of Bellanca or Tosca?

A. No.

Q. Terry Burnas or Abie Slabo?

A. No.

[fol. 864] Q. May I go along under the assumption, then, that other than the brother-in-law who has an office—

A. He has not an office. The office is of Michael Stern's.

Q. Whose firm has an office at 200 Fifth Avenue, you have no connection directly or indirectly with anybody in the garment district, the clothing district, the Brooklyn waterfront?

A. No.

Q. Or the clothing trucking industry?

A. None at all.

Q. Since your name appeared on this special panel and you secured a notice of prospective service, did anybody speak to you about the case?

A. No.

Q. In your work as a writer have you written for any other type of publications other than on foreign affairs?

A. None at all.

Q. Have you heretofore served as a juror in any type of litigation?

A. No.

Q. You had no jury experience on the other side?

A. None at all.

Q. I do not take it—

A. Being an American citizen.

Q. Are you in sympathy with the enforcement of the law of the State of New York?

A. I certainly am.

Q. There are nine lawyers here representing these defendants at the bar: Buchalter is represented by a former Assistant District Attorney under the last regime, Mr. Barshay. Do you know him?

A. I do not.

[fol. 865] Q. Or Mr. Bertram Wegman, a former Assistant United States Attorney?

A. I do not.

Q. Or Mr. Jesse Climenko?

A. No.

Q. Do you know anybody in the law offices of those three lawyers who represent Buchalter?

A. I do not.

Q. No employee at all?

A. Not that I know of.

Q. The defendant Weiss is represented by former General Sessions Judge Talley, former Assistant District Attorney Cuff, and former Assistant United States Attorney Murray Kriendler. Do you know any of them?

A. I know none of them.

Q. Or do you consciously know anyone employed or associated with them in the practice of law?

A. I do not.

Q. With respect to defendant Capone, represented by Mr. Sidney Rosenthal, Mr. Leon Fischbein, and Mr. Emanuel Rosenberg, do you know any of those lawyers?

A. I do not.

Q. Or anyone connected in their law offices?

A. No.

Q. Do you know intimately any member of the bar who specializes in the trial of criminal cases?

A. No.

Q. Mr. Protter, did you have any close connection with the former District Attorney, Mr. Geoghan?

A. No.

Q. Did you know him at all?

A. Not at all.

Q. Or any member of his staff?

A. No.

Q. With respect to the present District Attorney, Judge O'Dwyer, do you know him personally?

A. I do not.

Q. Do you know any member of his staff?

[fol. 866] A. Not that I know of.

Q. Specifically, do you know Assistant District Attorney Turkus, Joseph, or Klein?

A. No.

Q. When you say not that you know of, you are under the belief that possibly someone might have been appointed while you were on the other side and may not know the name?

A. What is that again?

Q. When I asked you if you knew any member of Judge O'Dwyer's staff, I think you said you do not think so, or not that you know of.

A. I said not that I know of, no.

Q. Were you in Brooklyn when Judge O'Dwyer's staff was appointed?

A. When was that?

Q. January 1, 1941.

A. No, I had gone back to France for a few months.

Q. At any rate, as you sit in the jury box you do not consciously know any of the Assistants on Judge O'Dwyer's staff?

A. I do not.

Q. Never having served on a criminal jury or a civil jury, I take it, then, that you have never heard a Judge's charge to a jury; is that correct?

A. That is correct.

Q. Waiting to be called up to the chair here, I take it that you have heard certain principles of law stated to the talesmen in the box.

A. I have.

Q. Will you take the law implicitly and in all its aspects from the presiding judge in the case?

A. I will.

[fol. 867] Q. And from no one else?

A. That is correct.

Q. If you were charged on the doctrine of reasonable doubt, that is, that a defendant is presumed to be innocent, and the presumption of innocence will stay with him throughout the trial until the prosecutor overcomes that presumption and establishes guilt beyond a reasonable doubt, will you follow the instruction of law?

A. I will.

Q. Will you endeavor conscientiously to apply the law that the trial justice gives you, to the facts in this case?

A. I shall.

Q. And will you give to each defendant on trial the benefit of the presumption of innocence and the doctrine of reasonable doubt and every other law and Constitutional right that the trial judge says defendants must have in a criminal case?

A. I will.

Q. Will you, too, look at the witnesses and look at what their character is, their background and their past life of crime and look the case over with a lot of care and caution when you examine it?

A. I certainly will.

Q. Will you give to the defendants everything, every Constitutional right they should have, as the Judge tells you you should give it to them?

A. I will.

Q. Do you have any fault to find with the prosecution of an indictment wherein the testimony of a co-participant, frequently called an accomplice, is used against defendants [fol. 868] on trial?

A. No.

Q. Do you have any bias or prejudice against the use of that kind of testimony?

A. No.

Q. Do you find any fault or do you have any prejudice against the District Attorney of the county, Judge O'Dwyer, for the use of that kind of testimony in a murder case?

A. No.

Q. As you heard mentioned, will you look at the accomplice, will you look at him from the standpoint of character, previous reputation, from the standpoint of his previous life of crime and every other aspect that would go to his believability? Will you look that over with common sense and understanding?

A. I shall certainly scrutinize the evidence.

Mr. Talley: Will you keep your voice up?

The Talesman: I will try.

Q. In considering everything and all the evidence in the case, will you consider that we are here trying a murder case, a charge of murder in the first degree?

A. What is that?

Q. In considering everything in the case—

A. Yes.

Q. —that is, the character of the accomplice, his past life of crime, all of his criminal exploits and every dirty and rotten thing he may have done throughout life, will you bear in mind that here we are calling an accomplice to testify against defendants in a murder case?

A. Certainly.

Q. And will you look the whole thing over with common sense and understanding and apply the tests to this type of [fol. S69] an issue here—the guilt or innocence of Buchalter, Weiss and Capone on a charge of murder in the first degree?

A. Certainly.

Q. Is there anything about the nature of the charge, that is, a charge of murder in the first degree, which would preclude you from giving a fair, just, and conscientious result as a juror?

A. No.

Q. You have no scruple, conscientious or otherwise, against capital punishment?

A. No.

Q. Something has been said here by one of the lawyers to other prospective talesmen, would the fact that his client has been convicted of prior crime and is serving a long term in jail, would there be any prejudice against his client on a charge of murder for that reason?

A. No.

Q. By the same token, would you, because a man has been convicted of prior crime and sentenced for the commission of those crimes, would you be inclined to relax your duty as a juror where he is charged with murder in the first degree?

A. No.

Q. Would you be inclined to deviate from the result that your mind told you was the right one?

A. No.

Q. Solely because he is in jail?

A. No, not at all.

Q. Will you decide whether or not he is guilty of murder in the first degree, for which he is brought into court, upon the evidence that you hear in the court-room?

A. Strictly upon the evidence in the court-room.

[fol. 870] Q. There shall be no relaxation or deviation from your job as a juror because he has been punished for the crimes he has committed?

Mr. Barshay: Your Honor, I object to the constant repetition. The man has answered twice no.

The Court: Overruled.

Mr. Barshay: Exception.

Q. As you sit in the chair, Mr. Protter, do you have any bias or prejudice against the testimony of a co-participant in the crime which would cause you to reject his testimony no matter what it was?

A. Not in advance, no.

Q. Will you approach that kind of testimony with an open mind, or have you any bias or prejudice about it from the start? That is what I am trying to find out.

A. No.

Q. Of course, if the prosecution really had the testimony of an accomplice or accomplices, even a thousand accomplices, and even if you believed them, even if you believe what they say about the defendants is true, even a thousand accomplices, if the District Attorney could get that many, you could not convict, the law would not let you—Do you understand that?

A. I understand perfectly.

By the Court:

Q. Are you on the staff of the *Leader*?

A. No, I am no longer connected with them.

Q. How long were you on the *Leader*?

[fol. 871] A. I wrote articles for the *Leader* from Paris.

Q. For how many years?

A. About two years.

Q. With what regularity?

A. About once every fortnight or so.

Q. And they carried you as foreign commentator?

A. Foreign commentator.

Q. Columnist?

A. Not columnist, foreign correspondent.

Q. Signed articles?

A. Signed articles, all of them.

Q. Under the name Protter?

A. Protter.

Q. Do you have any other newspaper or literary experience?

A. Yes, in France itself.

Q. What paper?

A. The *Louvre* and *de Popular Marianne*.

Q. Are they radical papers or are they—

A. Liberal.

Q. No particular—

A. Tendency to be for social reform.

Q. Yes, but to the extent of Communistic?

A. No, not at all.

Q. Just plain liberal?

A. Yes, plain liberal.

Mr. Climenko: May it please the Court, counsel would like the benefit or hearing the stenographic notes of the last five or six answers. The colloquy could not be heard.

The Court: I will try to speak louder.

Mr. Climenko: Thank you very much.

(Questions and answers read.)

Q. Did you get into any jam in France on account of your activities?

A. Oh, no, never.

Q. Your coming to this country was not the result of any [fol. 872] prosecution?

A. The Nazi invasion of Paris. I can say this: When I came here in '39 and the war started, I wished to go back because of my business affairs, the French—

Q. You carry no bitterness because of any event connected with the expression of your views?

A. None at all.

Q. Which might possibly reflect itself in the trial of the case under our system of justice?

A. None at all, sir.

By Mr. Turkus:

Q. In any of your past work on the other side, Mr. Protter, did you have occasion, in newspaper parlance, to cover the trial of a criminal case? By that I mean report it.

A. No, I handled strictly political affairs.

Q. And were those for publications written in the English language or in French?

A. Both English and French.

Q. So that, of necessity, you had a college degree?

A. I have a college education, but no degree—Columbia University.

By the Court:

Q. Which one?

A. Columbia.

Q. No foreign course?

A. No foreign course. You mean in foreign countries?

Q. Yes.

A. No.

Q. Your Columbia, that was the journalistic course?

A. No, I took up literature and philosophy.

Q. But you did not get your Doctor of Philosophy degree?

A. No, I left before.

[fol. 873] By Mr. Turkus:

Q. I was discussing the point of accomplice testimony with you, Mr. Protter, and I think that you very properly stated that you had no preconceived notion of accomplice testimony.

A. No preconceived notion?

Q. Yes, as to whether or not you would accept it or reject it.

A. Yes, no preconceived prejudice.

Q. That is right. So that may I go along with the understanding that you would not arbitrarily reject testimony solely because it emanated from an accomplice?

A. No.

Q. And that you have no prejudice against that kind of testimony?

A. No.

Q. You will look at the character of the individual who gives it?

A. Of course.

Q. You will look at his past background, the crimes he has admitted committing, the associates he has admitted having, and all the rest of the things that go to his detriment; isn't that right?

A. Of course.

Q. Do you feel because a man has been of bad character that he cannot tell the truth?

A. He may at times.

Q. Do you believe that it is possible that he may?

A. Certainly.

Q. With respect to what is required by way of supporting or corroborative testimony, will you take the law expressly from the Judge?

A. Certainly.

[fol. 874] Q. If the Judge should give you a definition that supporting or corroborative evidence is evidence which emanates from an independent source, that is, independent of the accomplice, and tends to connect the defendants with the commission of the crime, would you accept such a definition from the Court without finding fault?

A. I did not get the first part of your question sufficiently to carry over.

Q. (Pending question read.)

A. Certainly.

Q. Is your state of mind such, Mr. Protter, that you can view the evidence in this case and render a verdict that will be consonant with the evidence and consonant with justice in the case?

A. Certainly.

Q. Is there anything that I have made no mention about or asked any question, which goes to your ability to serve as a fair and impartial juror?

A. Not that I know of.

Q. There is one point that I must go into, and it is not of nature of prying into your private life. But, have you maintained any contact at all with Marcy Protter since you came back?

A. Socially, I saw him about once every three months over at my mother's home, and when he comes down occasionally. I occasionally have been to his home, I think twice since I have been back.

Q. Have you discussed any of the situation at the Brooklyn waterfront with him?

A. No.

Q. Did you read any articles which he may have written?

[fol. 875] A. No.

Q. In regard to the Brooklyn waterfront?

A. No.

Q. Did you ever hear of the name of Peter Panto?

A. No.

Q. In any of your discussions with Marcy?

A. No, I don't discuss political situations with my brother. We are at odds on that political thing. I figure my brother is rather radical. I don't agree with him.

Mr. Talley: We cannot hear.

The Talesman: I think my brother is rather radical. Not only before I wrote for the *New Leader*, which is a strictly anti-Communitic paper, and I believe my brother has—

By the Court:

Q. He is Left and you are Right?

A. Yes.

Q. That course in Columbia on philosophy, how long did you pursue that?

A. For several years.

Q. So you are familiar with John Dewey?

A. I am.

Q. You know him?

A. Not personally, but John Dewey wrote for the *New Leader*. He also wrote for a magazine where I had an article published several years ago.

Q. I misquoted John Dewey last week. I think you heard me misquote.

A. I did not pay attention to him.

Q. I attributed to him a saying that the credit for which is due to someone else, but it has to do with jury psychology.

A. I probably was not in the court-room when you said it. [fol. 876] Q. "Men possess thoughts, ideas possess men." Can you place that?

A. I cannot place it, but it is quite true.

Q. But it has to do, as you have seen, with the fact that when what is an idea rather than a thought gets ahold of you it is hard, either in the jury room or anywhere else, to let it go.

A. That is true.

Mr. Rosenthal: Judge, I do not want to appear pestiferous, but it is impossible for us to hear anything down here of what your Honor is discussing with the juror.

The Court: You will probably have to get amplifiers put in the court-room.

The Talesman: May I have a glass of water?

Mr. Rosenthal: We are below the bench here, so that the sound is drowned before we can get it. May we have that read, please.

(Questions and answers read as requested.)

Q. I do not want to prolong something that is irrelevant, but Alvin Johnson was the happy originator of that expression. You know Alvin Johnson?

A. No.

Q. You know who I mean?

A. I don't think I do.

Q. And it was the lead-off on the first essay or compilation by the editor of *The Nation*. Do you place it now? Ideas——

A. I have not read the book.

Q. You do not have to read all of it.

By Mr. Turkus:

[fol. 877] Q. I gather from the discussion which you had with the Judge about your writings that you have some very definite opinions with respect to labor unions?

A. In what way do you want me to answer that?

Q. I want to know is that so. Have you some definite——

A. I have opinions. I do not know whether they are so definite they could not be changed.

Q. Here is what I want to find out: In the event that certain names should crop up in the testimony of certain officials of a union or unions, is there anything by reason of the fact that there would be mention of certain such names as would give you a prejudice one way or the other toward either side in the trial?

A. I still cannot answer that question with a yes or no. I still don't get at what you are driving.

By the Court:

Q. Have you any prejudice on the subject?

A. No.

By Mr. Turkus:

Q. Well, for example, let me push this a little further without getting rid of it so abruptly. Should it appear that one or more officials of the union did something which a defendant in the case——

Mr. Barshay: I object to it. We are not concerned with what any official of the union did.

Mr. Turkus: Yes, we are concerned with what they did. There will be more of that before this case is over.

[fol. 878] The Court: The question will have to be finished.

(Pending question read.)

Mr. Barshay: Is the question, please—

Mr. Turkus: I am asking. Why don't you learn to disagree without being disagreeable?

Mr. Barshay: You ought to take your own advice first.

Mr. Turkus: You ought to take it. What you said last Friday—

(Pending question read.)

Mr. Turkus: I withdraw it in that form.

Q. Should it appear that one or more officials of the union were tied up with a defendant in this case in certain union activities, would you have any prejudice against the prosecution?

Mr. Barshay: I object to it.

Mr. Talley: Join in the objection.

The Court: Overruled.

Mr. Barshay: Exception.

Mr. Talley: Exception.

A. No.

Q. One of the lawyers in picking up the indictment said to one of the prospective talesmen, "It is an indictment with a few lines." Do you understand that this is an indictment for murder in the first degree?

A. Yes, I heard that in court.

Q. Whether it had a few lines or a thousand lines, it is [fol. 879] an important case to The People of the State of New York and to the defendants at the bar?

A. I understand that perfectly.

Q. Is there anything about this case in any of its aspects as you have heard by way of question or anything that you may have heard by way of questioning to the other prospective talesmen which would go to your ability to serve as a fair and impartial juror?

A. No.

Q. If selected as a juror in the case will you endeavor conscientiously to arrive at a just verdict?

A. I certainly would.

Q. In your past business life did you have occasion to discuss problems with other men and make decisions?

A. Often.

Q. Will you talk over the issue in the case—guilt or innocence—with the other jurors in the case with common sense and understanding?

A. Yes.

Q. Having in mind what your problem is in the case?

A. Yes.

Q. What the issue is, whom you are dealing with, and the nature of the charge?

A. Yes.

Q. Will you listen to common sense discussion with the other jurors in the case?

A. Certainly.

Q. Suppose you are selected as a juror and you hear every bit of evidence in the case from start to finish, you listen to the nine lawyers, or any three of them that get up and sum up in behalf of their clients, tell you everything that they see about the evidence, draw every argument and [fol. 880] conclusion that they will, and you hear the prosecutor draw his conclusions, the learned Court charges you on the law, you talk the case over with common sense and understanding in the jury room with the other jurors, and then your mind is satisfied beyond a reasonable doubt that at this bar of justice there are three guilty men, Buchalter, Weiss, and Capone, guilty of the crime of murder in the first degree, would you say so in your verdict?

A. Certainly.

Q. Would you have any fear to say so?

A. No.

Q. Any hesitation or reluctance?

A. No.

Q. If you are satisfied beyond a reasonable doubt that they are guilty, you will say so in your verdict?

A. Certainly.

Q. Would you have any fear to say so?

A. No.

Q. Any hesitation or reluctance?

A. No.

Q. If you are satisfied beyond a reasonable doubt that they are guilty, you will so say in your verdict?

A. Yes.

By Mr. Barshay:

Q. Mr. Protter, how long were you in France before you came here in 1939?

A. Sixteen years.

Q. I take it you read some American papers?

A. Occasionally.

Q. And have you read American papers within the last eight or nine years before your coming here?

A. In Paris, one American paper. Two American papers I get there usually are the *New York Times* and the *Christian Science Monitor*, and the *New York Herald-Tribune*. [fol. 881] which was published in Paris up to last June.

Q. Did you read American magazines there?

A. Occasionally.

Q. Did you meet people from New York or Brooklyn there?

A. Rarely, but occasionally.

Q. You may have discussed domestic affairs?

A. Political affairs, possibly, nothing else.

Q. Mr. Turkus has asked you and others repeatedly whether or not you knew anyone at all connected with the past administration, and he also asked you whether or not you were familiar, with a great deal of flourish about our ex-titles that we all had. That has nothing to do with the case, has it?

A. Not so far as I am concerned.

Q. It makes no impression on you?

A. None at all.

Q. He asked you whether or not you knew Mr. Turkus, and he just referred to himself as an Assistant District Attorney.

A. I never have seen Mr. Turkus before coming to this court.

Q. He is quite modest about it. You see, while I was in the past administration, he was the biggest criminal lawyer in Brooklyn. Did you hear about his fame?

A. No.

Mr. Turkus: Are you impressed now.

The Talesman: Not at all.

Q. You understand that personalities have nothing to do with this case at all?

A. Not at all.

Q. The mere fact that he mentioned a hundred names has nothing to do with this case at all?

A. Nothing at all.

[fol. 882] Q. When he mentioned Slabo and Babo and Terry Burns, they have nothing to do with the case?

A. Means nothing at all.

Mr. Turkus: I did not mention Babo. I did mention Abie Slabo.

Q. You are not in any wise impressed by any innuendo that may attach themselves to those names, isn't that so?

A. Not at all.

Q. So let us get down right to the business here.

Mr. Turkus: I object to the implication of that, let us get down to business, implication being the prosecutor is doing everything else but.

Mr. Barshay: I did not infer that, Mr. Turkus.

Mr. Turkus: Withdrawn then.

Mr. Barshay: You are doing nothing else but your job.

Q. Conditions in the particular section of Brooklyn have nothing to do with this case, have they?

A. I don't know. I don't know the case.

Q. Unless it comes out in the evidence that it has, you won't regard it?

A. Of course not.

Q. And the fact that on certain street corners certain people congregate, would have nothing to do with the case unless there was proof of it right from this witness stand?

A. Of course.

Q. All this atmosphere will be stripped from the case [fol. 883] unless it is evidence that you get from the witness stand; isn't that so?

Mr. Turkus: Atmosphere? There is no such thing as atmosphere that comes from a witness stand. I object to the form of the question.

Mr. Barshay: You did not hear, Mr. Turkus. You have a little bad cold.

The Court: Overruled.

A. I have not let mine be prejudiced by anything I have heard so far.

Q. Has your brother at any time, either by correspondence or in verbal talk, discussed the criminal cases with you?

A. No. I did not even know that he handled criminal cases.

Q. Speak up.

A. I did not even know that he handled criminal cases.

Q. And since your service on the jury have you spoken to him at all?

A. I have seen him once at my mother's house on the occasion of an aunt's death.

Q. Did you tell him you were a prospective juror?

A. I did.

Q. Did you tell the case you were called?

A. He knew it himself.

Q. Then did you talk about it?

A. No.

Q. Was anything at all said by him?

A. No, we were together for about five minutes, just taking my mother to my aunt's house.

[fol. 884] Q. Did he express any opinion in those five minutes?

A. None at all.

Q. Either about the case or the people involved?

A. No.

Q. And since then has he inquired of your progress?

A. No, I have not seen him since.

Q. Whether or not you were called or not called?

A. No, I have not seen him since.

Q. Have you spoken to him on the telephone?

A. No.

Q. I take it you have, then, your independent judgment in this matter?

A. Completely.

Q. Irrespective of your brother's views, politically or otherwise; is that so?

A. That is so.

Q. You have paid attention to trials in the normal course of events went on in France while you were there in seventeen years?

A. Civil trials.

Q. Once in a while you could not escape the newspaper comment about some criminal trials?

A. Of course there has been comment in the papers on the French criminal trials.

Q. And, being a journalist, or associated with journalists, you formed certain ideas about the prosecution of crime?

A. I have a general idea, which is very vague. I have not interested myself particularly.

Q. You know the law in France in the process of criminal laws is different than here? You know that, don't you?

A. I do not know the laws in France for criminal prosecution.

[fol. 885] Q. You know there that a defendant must prove he is innocent; you know that?

A. I didn't.

Q. You never heard that?

A. No.

Q. You never heard the Napoleonic Code different from ours?

A. I have heard the Napoleonic Code, but I did not know it in relation to criminal law.

Q. You never came across that proposition, that there a man must prove he is innocent?

A. No.

Q. But you are familiar with the law that here a defendant is presumed innocent?

A. That I know perfectly.

Q. And he has no burden. Since coming here, back to this country, have you read American papers?

A. Yes.

Q. And in the last year and a half or so have you read American papers?

A. Yes.

Q. Have you read Brooklyn papers?

A. Occasionally seen the Brooklyn *Eagle*.

Q. Have you read the *Mirror*?

A. No.

Q. Have you read the *News*?

A. I have occasionally seen the headlines of the *News*, but not the paper itself.

Q. Have you read anything about the defendants? you came here?

A. Nothing whatever.

Q. Not a word?

A. Not a word. It may strike you as exhibiting surprise.

Q. Have you read anything about the defendants?

A. No.

Q. Not a word?

A. No, I did not know, when you mentioned the name [fol. 886] Lepke and Buchalter, I did not know who they were.

Q. I did not hear you.

A. I heard those names for the first time in this court.

Q. And since coming to this court the very first time you were called——

A. That was Thursday of last week.

Q. ——have you looked at the newspapers at all?

A. Yes, for the political and the international news.

Q. You skipped any reference to this case?

A. I have.

Q. Did you read about Judge O'Dwyer?

A. No. I know he is a candidate for Mayor, that is all.

Q. Did you read his very interesting life history?

A. No.

Q. In any of the papers?

A. No.

Q. Never?

A. Never.

Q. Since coming here, sir, did you discuss with your fellow jurors anything at all about the case or the defendants?

A. No.

Q. Did you discuss it with anyone at all?

A. No.

Q. Have you formed any opinion or impression?

A. No.

Q. While you were sitting *hear* and heard the other jurors being questioned.

A. Impression of what kind, do you mean?

Q. Of any kind.

A. I know it is a trial for murder committed in 1936, that is about all.

Q. Have you heard in the questioning by Mr. Turkus of other prospective jurors asking them whether they read about the motive and the details and so forth?

A. Yes.

Q. Have you been impressed by those questions?

A. No.

[fol. 887] Q. Have you been impressed in any way whatever since your coming here, since you are sitting in this box, to the detriment of any of these defendants?

A. No.

Q. Not in the slightest degree?

A. Not in the slightest degree.

Q. You said here, Mr. Protter, that since you got your notice you thought it was best to move from Brooklyn and live in New York at the hotel.

A. I was already living in New York, so I stayed away.

Q. Now your mother is back?

A. My mother is back.

Q. She has been back for some time, I take it?

A. Back since September 15th or 16th.

Q. You gave two reasons for staying at the Maryland Hotel, the second one being because you got a notice in this case.

A. That is it, yes.

Q. That is your own words, isn't that so?

A. That is my own words.

Q. Is there anything about this case that caused you to live separate and apart from your mother in this hotel because you had received a notice?

A. When I found out the nature of the case I wished to avoid questioning on the part of my family.

Q. Tell me, Mr. Protter, has your family questioned you about this case at all?

A. No. I have avoided the questions.

Q. You have avoided them? Have they tried to question you about the case?

A. No, they have asked me about the jury and what the [fol. 888] questions posed to the jurors, but that is all, but as to the nature of the case it is no. I have let it be known that I did not like to have them ask me questions.

Q. Has your brother questioned you about the case?

A. No.

Q. How many members in your family?

A. I have four sisters and a brother.

Q. All live there?

A. No.

Q. How many times have they questioned you about this case?

A. I have seen one sister once. That was on Thursday of last week, or rather, of the week before, I should say. I have seen my brother Marcy once. I have seen my sister Tess once. I have seen my mother twice.

Q. Since you have been called?

A. Since I have been called.

Q. And while you were living at the hotel?

A. While I was living at the hotel.

Q. So that your living in New York does not prevent them from talking to you?

A. No, because I met them—I met my brother at my mother's home on Wednesday of last week on the occasion of the death of an aunt, and one sister lives downstairs in the house and another sister lives with my mother.

Q. You said, sir, that you are staying in New York to avoid being questioned?

A. Yes.

Q. Did you indicate to them the very first occasion that you should not and you ought not and they should desist from questioning you at all?

A. That is perfectly correct.

[fol. 889] Q. Did you do that?

A. I did.

Q. They apparently did not heed your suggestion?

A. They did, excepting for certain questions of curiosity as to the choice of jurors.

Q. Is that the reason why you are living in New York, to be away from your family because they want to question you about it?

A. That is the main reason, yes.

Q. You still see them?

A. Of course I do.

Q. And you still speak to them?

A. Of course I do.

Q. Is there anything else that causes you to live in New York other than that suggestion?

A. At the same time I am freer in my actions and I am seeking a position also in a hotel in Florida for this winter, if possible, and I thought that would help me out, staying in that neighborhood where I am.

By the Court:

Q. What hotel is that?

A. I am seeking a position in some hotel. I have not started in as yet.

Q. Any particular hotel?

A. No particular hotel.

Q. Miami Beach?

A. Miami Beach and Miami, around there.

Q. Have you had a position in a Miami Beach hotel?

A. Never.

Q. Have you applied for one?

A. I applied to an agency, but nothing has come of it yet.

Q. Do you mind telling us what kind of position?

A. Room clerk.

By Mr. Barshay:

[fol. 890] Q. Is there any fear that you have to be a juror in this case?

A. None at all.

Q. Is there anybody you want to avoid while you are here as a prospective juror in this case?

A. No.

Q. Has your brother tried in any fashion whatever, directly or indirectly, through members of your family, to talk to you about this case?

A. No.

Q. Not at all?

A. Not that I know of, no.

Q. Over the week-end did you speak about this case?

A. No, I have seen none of my family over this week-end.

Q. I take it, sir, that while you were sitting in this jury box you heard the other jurors being questioned, irrespective of their own feelings and opinions and answers, you say you still have an independent judgment?

A. Completely.

Q. And do you feel now that Mr. Louis Buchalter is as innocent under the law in this case as you are?

A. Yes.

Q. You feel that way toward him?

A. Yes, I do.

Q. Do you feel the same way about the other defendants?

A. I do.

Q. So no matter what you heard, you are free of all bias?

A. I am.

Q. And then you will expect the District Attorney to keep the promise of proving the defendants guilty beyond a reasonable doubt?

A. Yes, certainly.

Q. Will you consider this indictment merely as an accusation?

[fol. 891] A. Certainly.

Q. That is all?

A. That is all.

Q. And you will say to the District Attorney silently, "Now you go ahead, Mister; you accuse, you prove"?

A. That is correct.

Q. Do you feel that way?

A. I feel that way.

Q. And will you say further, "You prove beyond a reasonable doubt"? Did you ever hear that expression before?

A. Yes, I have heard it here quite often.

Q. And before that time have you heard it?

A. I have not been in court before.

Q. Will you accept the definition from his Honor as to what reasonable doubt is?

A. Certainly.

Q. Then you will have to go beyond a reasonable doubt won't you?

A. I do not understand.

Q. If the Judge should say to you they must prove the defendants' guilt beyond a reasonable doubt—

A. Certainly.

Q.—you will do exactly that?

A. Certainly.

Q. Would you require the defendant Buchalter to furnish any proof in this case?

A. No.

Q. Would you expect any explanation from him with respect to any charge against him?

A. No.

Q. Would you expect him to explain anything at all in this case?

A. No.

Q. Would you hold against him the fact, if the fact should [fol. 892] so develop—and this is not promised one way or the other—that he remain silent in this case, would you hold that against him?

A. No.

Q. Not in the slightest degree?

A. It is up to the prosecution to convict a man.

Q. And you will expect the prosecution to prove the guilt of this man in this case only?

A. Certainly, beyond any reasonable doubt.

Q. No other case?

A. What is that?

Q. Nothing to do with any other case?

A. Of course not.

Q. Any other condition?

A. Of course not.

Q. Any other fact?

A. Of course not.

Q. Any other association?

A. Of course not.

Q. Union or otherwise?

A. Union or otherwise.

Q. Have you heard the name of Reles?

A. Who?

Q. Abie Reles.

A. Is that the name I saw in the headline of a paper?

Q. You may have.

A. About a week or so ago.

Q. You may have.

A. I heard the name pronounced here the other day in the court-room.

Q. Any of the names that were read here by either Mr. Turkus or myself, have you any knowledge of those people at all?

A. No, none at all.

Q. Reles and Tannenbaum and Magoon and Burnstein?

A. No.

Q. Do you know anybody in the Police Department?

A. No.

[fol. 893] Q. In your writings have you come in touch with any police officials?

A. Here? No. In the United States, no. I have done very little writing since I am back.

By the Court:

Q. In your cultural background before you came to this country—

A. Before I came back.

Q. You were born here?

A. Of course.

Q. I misunderstood you. Then you had gone abroad as a writer on French papers?

A. No, I went abroad as a tourist and then stayed abroad as tourist and then later on came here.

Q. Then you did not acquire your culture under the French influence?

A. No, American.

Q. Your thought culture.

A. No, here.

Q. Did you learn to think freely while abroad writing, or before you went abroad?

A. Before and during my stay abroad.

Q. Did you follow any of the culturists or just the liberal writers in acquiring your own freedom of thought?

A. Just the liberal and philosophical writings.

Q. Does that freedom of thought mean this: that while you formed opinions they are only tentative and you arrive at no decisions until the necessity of decision arises?

A. That is quite correct.

Q. That at all other times your mind remains still open?

A. That is quite correct.

Q. I take it you are too young a man to have been living at [fol. 894] the time of the Dreyfuss trial?

A. Yes, forty-one.

Q. But I assume you have studied Zola, you have read Zola?

A. I have not read Zola, but I know the Dreyfuss Trial.

Q. Have you formed any distinct impressions concerning the Dreyfuss trial that have any bearing upon the trial of criminal cases?

A. I did not go into it deep enough for that.

By Mr. Barshay:

Q. Well, you formed some impression as the result of the Dreyfuss trial, haven't you?

A. No.

The Court: He did not go into it deeply, he said.

The Talesman: In reading of it I saw it mainly as a social and political affair, rather than a criminal affair.

Q. At any rate, you have come to the conclusion that it is possible for an innocent man to be accused of crime?

A. Of course.

Q. And in this country we are fortified with the presumption of innocence?

A. Yes.

Q. You agree with that, don't you?

A. Certainly.

Q. Have you formed any opinion as Mr. Turkus was questioning the jurors with respect to accomplice testimony?

A. Did I form any opinion?

Q. Yes.

A. No.

Q. Is your mind still open on the point?

A. Completely.

Q. So you will be ready to take from his Honor your [fol. 895] instructions with respect to accepting or rejecting accomplice testimony?

A. Certainly.

Q. I take it the Court will tell you to accept it with caution and weigh it carefully. Won't you?

A. Certainly.

Q. In your own mind being a person of experience and having come in contact with lots of people there and here, will you consider each demerit mark against a person as he takes the stand? Do you understand me, sir?

A. Your question is not complete in my mind.

Q. When a man takes the stand he swears to tell the truth?

A. Yes.

Q. Sometimes he does and sometimes he fools you; is that right?

A. That is correct.

Q. You have had that experience?

A. Of course.

Q. When he comes to apply for credit sometimes he fools you too?

A. Certainly.

Q. When he comes here on the stand he really is applying for credit, you should believe him. That is what he is here for; isn't that so?

A. That is right.

Q. You will want to know who he is?

A. Certainly.

Q. And if he says to you out of his own mouth or admits out of his own mouth, "I have been a murderer and a crook and a perjurer and a robber and a pimp," with each admis-

sion that comes from his mouth or is forced from his mouth, you with greater care weigh his testimony?

A. Certainly.

[fol. 896] Q. Isn't that so? And so the mere fact that he raises his hand to tell the truth won't be accepted by you as a fact?

A. No, not at all.

Q. The more people of that character that take the stand the harder you will be to convince of their truth?

A. I would have to have sufficient evidence for that.

Q. You would not accept it so readily, would you?

A. Not on their own word.

Q. What?

A. Not on their sole word, no.

Q. And then this evidence which tends to connect the defendants with the commission of the crime which Mr. Turkus says he will offer to corroborate these men whom I describe to you, you will look into their history too, won't you?

A. Certainly.

Q. They are no better than the fellows who said they are accomplices; it will be very hard for them to convince you of their truth-telling ability, won't it?

A. Certainly.

Q. You will accept their testimony with a great deal of caution?

A. With a great deal of caution is correct.

Q. Any you will want to know why they all of a sudden appear on the prosecution's side of the case, won't you?

A. I suppose I would.

Q. You will ask yourself that question?

A. Certainly.

Q. And if you find that they are receiving extra-special treatment at the hand of the District Attorney's office, you will find out whether that extra-special treatment, in [fol. 897] addition to saving their own necks, is inducing them to lie? You would want to find that out, wouldn't you?

A. I would. I would require—I would make them subject to further caution.

Q. The more you find out about them the more caution you will use?

A. Of course.

Q. Of course, having had your experience, you know that there is such a thing as uttering a lie and repeating it and repeating it in the hope that same people will believe it?

A. Yes.

Q. You heard that philosophy on the other side?

A. Dr. Goebels' philosophy.

Q. You won't apply it here, his philosophy?

A. No.

Q. And you will reason with your fellow jurors, won't you?

A. Certainly.

Q. And you will guard the rights of Mr. Buchalter?

A. Certainly.

Q. When you said you were in sympathy with the enforcement of the criminal law, you meant the criminal law applicable to all people?

A. To all people.

Q. Including this defendant?

A. Of course.

Q. He has a stake here, too. You knew that, don't you?

A. Certainly.

Q. Now, in a case like this, where more than one defendant is being tried, there will be testimony given about all defendants. You understand that?

A. Yes.

[fol. 898] Q. It will be your job to sift the evidence separately as against each defendant?

A. Certainly.

Q. Intellectually you are qualified for that, I take it.

A. I think so.

Q. You won't say, "Birds of a feather flock together," will you?

A. No.

Q. Mere association is no proof of crime, is it?

A. No.

Q. You won't use the evidence against the man unless it applies to that man?

A. Unless it applies to him, of course.

Q. And if it should slip the mind of one of your fellow jurors and subconsciously he may forget himself and use the evidence against one which did not come from the wit-

ness stand as against that one, you will fight just as hard for that legal right of the defendant involved, won't you?

A. Of course.

Q. You will call it to his attention?

A. Certainly.

Q. Does the element of time conflict with your desire to serve as a juror, if you have that desire?

A. No.

Q. You will render a judgment as against each defendant as you as an individual are convinced or fail to be convinced by the evidence?

A. What I conscientiously believe

Q. And if, out of all this mass of testimony, stripped of atmosphere, sympathy, bias, or prejudice, you find one reason for doubt which arises from the evidence with respect to the guilt of Mr. Buchalter, you will say so, won't you?

A. If it is a reasonable doubt, yes.

[fol. 899] Q. No other element can interfere with that conclusion?

A. No.

Q. Are you now of the opinion that you owe duty neither to Mr. Turkus nor to ourselves?

A. To no one except to The People.

Q. Your duty to live up to your oath?

A. That is all.

Mr. Barshay: And that is all.

By Mr. Rosenthal:

Q. Are you married?

A. Widower.

Q. Any family?

A. No.

Q. Before you received the notice in this case you lived at home with your mother; is that correct?

A. Yes, but in the summer time I was away at the Spoford Hotel as a room clerk.

Q. Is your brother the lawyer married?

A. Yes, he is.

Q. Does he live at home with your mother?

A. No, he does not.

By the Court:

Q. What hotel was that?

A. Lake Spofford Hotel, Spofford, New Hampshire.

By Mr. Rosenthal:

Q. Presently are you employed at all?

A. No.

Q. How long since you have done any writing?

A. Since I am back I have only written a few book reviews.

Q. That is, you are back here two years?

A. Yes, except I left for France again in the autumn of 1939 and arrived here in the summer of 1940.

[fol. 900] Q. And since you have returned, you say with the exception of writing a few book reviews you have done no writing at all?

A. No.

Q. Have you had any other occupation since you returned?

A. Since I returned.

Q. Yes.

A. No.

Q. And at present you are seeking employment at one of the Southern hotels as a room clerk?

A. Yes, I thought of spending the winter away from New York. That is the only way I can afford to do so.

Q. When Mr. Barshay was questioning you, you said that you left home to go to New York to a hotel so as not to be questioned?

A. No, no, I did not say that. I was working in the Lake Spofford Hotel from June 25th until September 3rd. On coming back I went to a hotel in New York where I am ever since. My mother arrived at her home on the 15th or 16th of September. I have not gone back since then.

Q. Didn't you make mention to him that when you found out the nature of the case you remained away from home in order to avoid questioning?

A. Yes, that is true.

Q. What did you mean when you say you found out the nature of the case?

A. I found it out here.

Q. When was it that you found it out here?

A. On Thursday, September 17th or 18th.

Q. Were you in court in August?

[fol. 901] A. No, I was not here. I asked to be excused by letter.

Q. And when you asked to be excused by letter, didn't you in any wise read any of the articles in the paper as to the nature of the case?

A. None at all. I did not know what case it was.

Q. You say you do read the *Brooklyn Eagle*?

A. Occasionally I have read it.

Q. Have you read it recently?

A. I have not read it in the last four or five months.

Q. Last four or five months?

A. That is so.

Q. Do you read the *Mirror*?

A. No.

Q. You recall having read in the *Brooklyn Eagle* any other names, or do you recall any of the names of any of the defendants?

A. No, because I usually read only the international news and the political news from Washington.

Q. But in answer to Mr. Barsbay, you said you had a slight recollection of the name Reles.

A. I saw that in a headline on a news stand about a week or so ago and then I heard it here since, and that is the reason why that particular name comes back to my mind.

Q. With the exception of having seen in a headline Reles' names, have you seen any articles of any character that you can now recall that made reference to any of the names mentioned by Mr. Turkus?

A. No.

Q. Have you read anything at all in respect to this case?

[fol. 902] A. Nothing at all.

Q. Are you on speaking terms with your brother?

A. Yes, I am on speaking terms with him.

Q. And when you met him here recently did you in any wise or did he in any wise discuss with you the names of anybody involved in the case?

A. No.

Q. Was he one of the individuals who questioned you in respect to your duty here, or was that confined to your sister and your mother?

A. Confined to my sister and my mother.

Q. Did your brother in any wise at any time speak to you about your jury service or the contemplated questions that were being asked here of other jurors?

A. No, expecting one question. He asked me whether I had been called yet or not. I said no, and that was all. That was the only question.

Q. He merely asked you whether you had been called—accepted, I assume you mean.

A. That is it.

Q. And you answered him no; is that correct?

A. Yes.

Q. You did state that you are not in sympathy with your brother's views of life; is that correct?

A. My brother's political views.

Q. Does that include his association with individuals attached to any particular organization?

A. Yes, because when I met or occasionally run across him he has been with people of his own views.

Q. He has been with people of his own—

A. Of his own views, political views.

[fol. 903] A. Of his own views, political views.

Q. According to you—and if I am wrong, correct me—your brother has represented some people of some different unions; is that correct?

A. I don't know.

Q. Do you know anything of your brother's legal work at all?

A. I know that he has done some work for some unions. I do not know which ones or what kind of work. I imagine it is legal work, being a lawyer, but I could not state that for a fact.

Q. Well, according to Mr. Turkus, in his questioning of you, he implies, over the objection of Mr. Barshay, that the question of some unions or some union activity, I think is his word, may be brought into this case.

Mr. Turkus: I object to the form of the question.

Mr. Rosenthal: I submit that is a correct statement. He made the statement and Mr. Barshay objected to it, and your Honor overruled the objection.

The Court: Finish the question.

Mr. Rosenthal: The question is finished.

Mr. Turkus: I object to the form of the question, please the Court.

The Court: Read that again. It did not impress me as a question.

Mr. Rosenthal: Your Honor is right. I was interrupted by Mr. Turkus after the preamble and before the question was finished. I will withdraw the question and repeat it.

[fol. 904] Q. You recall Mr. Turkus mentioned to you that there would be some question of union activities of one or more of the defendants in this trial. Do you recall that?

A. I recall it.

Q. You recall at the time he made mention of that that Mr. Barshay objected to it. Do you recall that?

A. I recall that.

Q. Assuming that there were mentioned in this trial as to one or more of the defendants some question as to union activities which may or may not coincide with the views accepted by your brother as to the particular unions he may have represented, with which view you have admitted you disagree. Would that in any wise prejudice you against any of the defendants?

A. No, not at all.

Q. You feel that, irrespective of the political views of any individual, that when a person is accused of crime, that the particular crime that they are accused of must be proven by the District Attorney presenting evidence to satisfy you beyond a reasonable doubt as to the truth of the allegation; is that true?

A. Of course.

Q. You said you had no opinion as to accomplices' testimony; is that true?

A. No preconceived opinion.

Q. Assuming, sir, that the Court were to charge you the law of our state recognizes two types of accomplices, one where the Judge says to you, "I charge you this man is an accomplice"; is that clear so far?

A. That is clear.

[fol. 905] That is what would be termed an accomplice as a matter of law. Is that clear?

Q. And then another type where the Judge says, "I, as a Judge, cannot charge you as a matter of law this man is an accomplice, but you, the jurymen, have a right, taking into consideration everything he said on the stand and the circumstances, to say as a question of fact in the jury room

that this man is an accomplice." Is that clear, or shall I repeat it?

A. Please repeat it.

Q. I withdraw it for brevity and repeat it this way: Assuming the Judge tells you that the law of our State, not only in this case, but in every case, is that there may be two types or methods of determining who is an accomplice, one where the Judge says to you, "I charge you he is an accomplice." There you, the jurymen, are bound to consider him as an accomplice. Is that clear so far?

A. Perfectly.

Q. The other where the Judge says to you, "I do not charge you as a matter of law he is an accomplice, but you, the jurymen, may find from the evidence as you view it, the facts and the circumstances, that he is an accomplice." Is that clear to you?

A. That is clear.

Q. Now then, if the Court were to charge you that is the law, would you feel that merely because the Court left it to you as a question of fact, the complicity of an individual, that because the Judge did not say he was an [fol. 906] accomplice as a matter of law, that therefore he could not be an accomplice?

A. No.

Q. Now then, assuming that the Judge were to tell you that one accomplice cannot corroborate another accomplice. Is that clear to you?

A. That is clear.

Q. In fact, that one or more—it goes to any number of accomplices, cannot corroborate one another— Is that clear?

A. That is clear.

Q. And assuming that the Judge left to you the testimony of certain individuals, to determine whether they were accomplices— Is that clear?

A. That is clear.

Q. Now then, if you find that they were accomplices and that was the only evidence that was in the case, determined by you as a fact in your jury room; and the Judge was to further say to you, "Unless there is independent evidence tending to connect the defendant with the crime you must acquit him," would you hesitate, if you found no independent evidence, to acquit?

A. I would hesitate.

Q. I don't think you understand me, sir. It is a long question.

A. Give me the latter part of it instead of the first.

Q. The latter part is that after you get into the jury room—and I will make it brief—the only evidence outside of accomplices is testimony which you have a right to find to be accomplice testimony—is that clear?

[fol. 907] A. That is clear.

Q. And you determine it is accomplice testimony, would you hesitate to acquit the man if the Judge were to tell you that unless you found independent evidence—

A. I would not hesitate, no.

Q. Now then, from what has been said, it may be that the so-called independent evidence in this case will be an alleged admission made by one of the defendants to one of the People's witnesses. Is that clear to you?

A. That is clear.

Q. In other words, one of the People's witnesses may go on the stand and say, in addition to the so-called accomplice, "He, the defendant, told me that he, the defendant, committed the crime." Is that clear to you?

A. That is clear.

Q. Now then, if that happens to be the case in this trial, will you, in determining the question of the truth of this witness's statement, take into consideration not only his past life of crime, but what motive or gain he may procure by having made the statement on the witness stand, the defendant told him he committed the crime. Will you do that?

A. Certainly.

Q. Now, then, if you find that that particular individual has admitted to the District Attorney that he has committed maybe five or six or more murders and numerous other crimes for which he has never been punished and for which there are no indictments, and if you find further, that he has been out playing baseball with detectives, [fol. 908] living in swell hotels and taking walks down in Coney Island, and other things, while he is waiting for these trials, would you scrutinize carefully this so-called alleged admission—

A. Certainly.

Q. —before you determined whether it was true or not?

A. Certainly.

Q. It may develop in this trial that the defendant represented by me will offer proof to you that he, the defendant, was nowhere near the crime at the time it was committed. Is that clear?

A. That is clear.

Q. That is what we term an alibi. Is that clear to you?

A. That is clear.

Q. You have heard Mr. Turkus mention to previous men that were examined the question as to whether or not on the question of alibi you will take the law from the Court.

A. Certainly.

Q. I am going to ask you this question, sir: If the Judge charges you that at no time must the defendant offer any proof at all to prove his innocence, he can sit mute, he does not have to take the stand, he does not have to call a witness, he does not have to do anything, and still you have to find, without any prejudice in your mind because of that fact, from the evidence adduced by The People his guilt before you can find him guilty, you would follow that, wouldn't you?

A. Certainly.

Q. Now then, if the Court further tells you that the offer [fol. 909] of an alibi does not change the method of proof or the burden of proof— Is that clear?

A. That is clear.

Q. —and it is sufficient if in an offer of alibi that particular alibi in itself raises a doubt in your mind— Is that clear?

A. That is clear.

Q. In other words, sir, if the Court tells you a reasonable doubt can be raised either by evidence or by lack of evidence, and a doubt may be created where one would otherwise not exist by offering certain things, you would follow that law, wouldn't you?

A. Certainly.

Q. And if in your mind, even though it is not established beyond a reasonable doubt that the alibi is correct, if in your mind the offer of proof of an alibi establishes a doubt in your mind as to whether this defendant ever committed this crime, you would resolve that doubt without hesitation in his favor, wouldn't you?

A. Certainly.

Q. Have you ever served on a criminal jury before?

A. No.

Q. On a civil jury?

A. No.

Q. Irrespective of the fact that you have never served on a jury, you know, sir, that the calling of twelve men together to decide the fate of an individual is for the purpose of moulding twelve minds into one to bring in a verdict; you know that?

A. I know that.

Q. However, you also realize that whether or not you have ever been on a jury or you have been on one, twenty [fol. 910] or fifty times, that when your opinion is once formed concerning the evidence, if it is based upon your honest, conscientious opinion, due to your logical reasoning and not an arbitrary act, that if after you reason with your fellow men and state your opinion and they state theirs, they are unable to convince you or you are unable to convince them that either one of the theories is correct—Is that clear?

A. That is clear.

Q. That then it is your duty to remain adamant and firm and fixed in the opinion which you have gained; is that clear?

A. Certainly.

Q. Merely because of your inexperience as a jurymen, sir, you would enter the jury room irrespective of the thought of the District Attorney who has made a statement here about hung juries and arbitrariness and so forth—

Mr. Turkus: Just a minute. I object to that.

The Court: Finish the question.

Q. —would you have the courage—I just saw you motion to the District Attorney.

Mr. Turkus: I asked him if he would desist from his answer until I put my objection on the record, and he said he would, with his hands.

Mr. Rosenthal: Would you mind sitting down while I am addressing the jurymen?

Mr. Turkus: No.

Mr. Rosenthal: I ask the Court to have him sit down [fol. 911] until I finish my question.

The Court: Finish your question; then stand up.

Mr. Rosenthal: The Court told you to sit down until I finish the question.

Mr. Turkus: Is Judge Rosenthal presiding?

Mr. Rosenthal: No, sir, the Court is presiding, and has made the statement.

The Court: I would like to hear the question finished before the objection is made. Go ahead, Mr. Rosenthal.

Q. Do you remember the question as far as I have mentioned it to you?

A. I would like to have it read.

Q. If you have once become fixed in an opinion in the jury room and you have listened to the reasoning of your fellow jurymen and they are unable to convince you that that opinion is incorrect and that opinion is founded on your conscience and not any outside consideration or other, merely because the District Attorney here has stood up at the time one or more of the lawyers were questioning prospective talesmen and said about hung juries and arbitrariness and so forth, would that dissuade you, sir, from following out your conscientious opinion and reserving that opinion and fighting for it in the jury room?

Mr. Turkus: I object to the form of the question. There were no statements made by the prosecutor.

The Court: Overruled.

A. No, that would not prejudice me.

[fol. 912] Q. The mere fact of your inexperience as a jurymen, would that dissuade you?

A. No.

Q. Or hours or lateness or numbers against you?

A. No.

Q. You would still retain the opinion if it is formed on your conscience?

A. Of course.

Q. Of course you realize, sir, that it is your duty to reason with your fellow jurymen?

A. I understand.

Q. The theories. You cannot sit in a corner and say, "I have made up my mind and I won't listen to you."

A. No.

Q. It is your duty to give a reason that you have in your mind?

A. Of course.

Q. So as to enable and benefit the other jurymen with your reasoning?

A. Certainly.

Q. Maybe yours is better than theirs, and maybe they will acquiesce or possibly, on listening to them, they may have a better sense of reasoning than you and you will acquiesce; is that clear?

A. That is correct.

Q. But once that reasoning has been exhausted and you are not convinced of the fallacy in your reasoning, you will retain your opinion; is that correct?

A. That is correct.

Q. Have you listened at all to the questions that have been addressed to so many of the men who have been here?

A. Yes, I have heard quite a few of them.

Q. Assuming, sir, that it appears that the defendant knows some of The People's witnesses and that The People [fol. 913] know some of the defendants', admittedly so, the mere fact that they know one another, would that in itself prejudice you, that in itself, the admission that they know one another?

A. Prejudice me in what way?

Q. In your opinion which you arrived at in the jury room.

A. That the People's witnesses know the defendants' and vice versa?

Q. Yes.

A. It would make their statements subject to additional caution.

Q. When you say it would make their statements, do you mean The People's witnesses or the defendant?

A. The People's witnesses.

Q. So that, assuming that it were to develop, for instance, that one of the defendants had a restaurant and that some of these people who may testify visited the restaurant, the mere fact that there was knowledge or knowing of one another, without your belief of the store of any participation in the crime on the part of the de-

fendant, would that have any weight or effect on you or prejudice you against any of the defendants?

A. No.

Q. Mr. Turkus you have heard repeat on a number of occasions as to whether or not you would have any prejudice against a case being broken from the inside. You recall that?

A. Yes. He did not use that expression. He did not use that expression, but he meant the same thing.

Q. To you personally he did not use that expression? [fol. 914] A. I heard it before.

Q. But to other jurymen while you were in the courtroom he used the exact words "broken from the inside."

A. That is it.

Q. You realize it is your job to find out whether there is any case broken at all, if you are taken as a juror?

A. Certainly.

Q. That is not his job to tell you; it is your job to find out.

Mr. Turkus: I object to that. I have a perfect right when I examine a talesman, certainly equivalent to that of the defense, to find out if there is anything in their state of mind that makes them improper jurors.

The Court: Nobody is questioning that.

Mr. Rosenthal: And I have a right to question whether it has any effect on him, the mere fact that he says it. I am not questioning his right.

Mr. Turkus: No need for shouting. If that is understood, I will withdraw the objection.

The Court: We will take a recess for lunch. Resume at two o'clock. Everybody kindly be in place at two o'clock.

(A recess was thereupon taken until 2 o'clock p. m.)

[fol. 915] Afternoon Session—Trial Resumed

BENJAMIN PROTTER resumed the stand.

Mr. Rosenthal: No further questions. No challenge for cause.

The Court: Any peremptory?

Mr. Turkus: There was a question suggested that I wanted to pursue with this salesman

The Court: This gentleman has not said whether or not he has had any previous hotel experience in Miami Beach.

The Talesman: I said no.

The Court: Have you been there?

The Talesman: No, never been there.

By Mr. Turkus:

Q. In response to a question by Mr. Rosenthal, he asked you whether if his defendant—if I remember it correctly—admitted association with an accomplice, whether you would hold any unfavorable inference against his client for that reason. I think you probably said no.

A. I said no.

Q. You would not have any prejudice against him. And then in part of your talk with Mr. Rosenthal I think that you said—as a matter of fact, I wrote it down—it may not have been exactly what you meant, but you said if a defendant took the stand and said he associated with one of these accomplices, that you would view the testimony of that accomplice with additional caution.

A. Yes, inasmuch as he is an accomplice, with added [fol. 916] caution.

Mr. Barshay: Let us find out what he said, your Honor.

The Talesman: I used the expression, "with additional caution."

Q. Do you mean exactly that if a defendant should take the stand and say that he knows and associated with an accomplice, that you would take that accomplice's testimony?

A. I did not understand that; I did not understand that part of it. That the defendant is on the stand, was that?

Q. Mr. Rosenthal was interrogating you with regard to a defendant taking the stand and admitting knowledge and association with an accomplice, as I understood it.

A. I did not understand the question that way.

Mr. Rosenthal: That was not the question, your Honor.

The Court: I did not understand that.

Mr. Turkus: I wrote down, when that was discussed with Mr. Rosenthal, that the prospective salesman—

The Court: The talesman did not so understand. Apparently we were all confused.

Q. Let me see if I have it straightened out now in so far as your mental state of mind is. In the event that a defendant should admit association with an accomplice, would you, because of the admission of the defendant, apply additional caution to the testimony of the accomplice?

A. No.

Mr. Turkus: There is one point of law that I must check in the Judiciary Law before I can say—
[fol. 917] Mr. Rosenthal: I did not hear.

Mr. Turkus: There is a point of law that I must check in the Judiciary Law.

The Court: On what point?

Mr. Turkus: There is a point of residence.

The Court: That can be raised at any time. That is jurisdictional.

Mr. Turkus: The address is a New York address.

The Court: The address is 772 Linden Boulevard on the jury notice and on the slip.

Mr. Turkus: I know, but there is testimony now that the prospective talesman resides at a New York hotel.

The Court: Yes. The President resides at the White House. Where does he vote?

The Talesman: I voted for the Primary Elections in Brooklyn.

By the Court:

Q. You voted this month?

A. This month, at the Primary Elections in Brooklyn, in a schoolhouse on Linden Boulevard.

The Court: You can say whether or not he is tentatively acceptable to both sides, subject to that.

Q. Have you always lived in Brooklyn before you went to Paris?

A. Yes.

Q. What part of Brooklyn?

A. Lincoln Place, near, I think it was near Schenectady or Utica Avenue or Troy.

[fol. 918] Q. Did you attend those Sunday evening meet-

ings that used to be held at the public school out in Brownsville?

A. No.

Q. There was an Open Forum there, liberal discussions.

A. No.

Q. Or the Brooklyn Philosophical Association down in Williamsburg?

A. No.

Mr. Turkus: I am going to exercise a peremptory challenge. [fol. 919] Your Honor has overruled my challenge on residence.

The Court: Pardon me?

Mr. Turkus: I say in view of the fact that your Honor has overruled by challenge——

The Court: I have not overruled a challenge.

Mr. Turkus: I press the challenge on the theory——

The Court: I did not understand you made a challenge.

Mr. Turkus: That is what I did.

The Court: I misunderstood. You mean you challenge on the question of residence?

Mr. Turkus: That is it.

The Court: That is a different thing.

Mr. Turkus: I discussed it with my associate, Mr. Joseph, and we feel that I must press that challenge.

The Court: You mean you want to look up a question of law?

Mr. Turkus: That is it.

The Court: And submit anything you find on that challenge later? Very well. Both sides may announce a question of peremptory challenge later, but let me have any authority you find by tomorrow morning.

Mr. Turkus: I have not had an opportunity to check it, and I was playing safe with it.

The Court: You can do it this afternoon, or have it [fol. 920] done, and in the meantime the gentleman can take his seat, No. 2, tentatively, and submit to peremptory challenge later.

Mr. Turkus: All right.

Mr. Talley: That challenge must be made tomorrow morning, I understand, if it is going to be made.

The Court: Yes.

(The talesman then took Seat No. 2 in the jury box.)

CHARLES H. BERNHARDT, of 749 Eastern Parkway, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Mr. Bernhardt, what cross street is near that 749?

A. Kingston Avenue.

Q. Do you know whether that is in the vicinity of a restaurant known as the Famous Restaurant and Dubrow's Restaurant?

A. That is about a half a dozen blocks away.

Q. Do you have any contact with those restaurants?

A. No.

Q. You are listed on the trestle board as an office manager?

A. That is right.

Q. What kind of office work do you do?

A. I check credits, take care of an office.

Q. And what is the name of the firm by which you are employed?

A. Columbia Products Corporation.

[fol. 921] Q. And where is their place of business?

A. 249 McKibben Street, Brooklyn.

Q. Is that in the——

A. Williamsburg section.

Q. What is this Columbia manufacturing?

A. Powder puffs, cosmetic bags.

The Court: What address was that?

The Talesman: 249 McKibben Street, Brooklyn.

Q. Prior to living at the Eastern Parkway address did you live in another section of Brooklyn?

A. Yes, 1087 Carroll Street.

Q. What section or district of Brooklyn is that?

A. Crown Heights.

Q. Have you lived there for a number of years?

A. Yes.

Q. Did business or any other contact bring you into contact with people in the Brownsville-East New York area of Brooklyn?

A. Just relatives.

Q. Who reside there presently?

A. That is right.

Q. Do you know the streets that these relatives live on?

A. Sutter and Bristol.

Q. And how close is the relationship?

A. An aunt.

Q. Do you know how far that is from Sutter and Bradford Street?

A. No, sir.

Q. Do you visit in that area frequently?

A. About once a month.

Q. Have you any other relatives in the Brownsville area other than an aunt?

[fol. 922] A. No.

Q. Is she in business in that neighborhood?

A. No, just her residence.

Q. A housewife?

A. That is right.

Q. Has she lived there for a number of years?

A. Oh, yes.

Q. So that you have been coming into that district over a period of years on an average of once a month?

A. That is right.

Q. Do you have any contacts of any kind, nature, or description with persons or firms in the garment district of Manhattan?

A. No, sir.

Q. Or the clothing district?

A. No, sir.

Q. Have you had any in the past?

A. No.

Q. Any connection with persons on the Brooklyn waterfront?

A. No, sir.

Q. Or in clothing trucking?

A. No, sir.

Q. Did you hear anything of this case shortly after it happened out in that Brownsville district when you were out there?

A. I don't get that.

Q. Did you hear anything out in the Brownsville district when you visited there, in regard to this case?

A. No, nothing at all.

Q. Four or five years ago?

A. Nothing at all. Just went there for a short visit and that was all.

Q. Since your name appeared on this special panel did [fol. 923] anybody speak to you about the case?

A. Just at home and at the place of business.

Q. Was that in connection with prospective service?

A. That is the idea.

Q. Other than that have you had any discussion with anybody about the merits of the case?

A. No, no one at all.

Q. I take it, in common with others, you read newspapers.

A. That is right.

Q. What newspapers do you read?

A. *Mirror*, *Brooklyn Daily Eagle*.

Q. Is there anything that you have read in the press—

A. I have been a constant reader of the *Mirror* and of course the *Brooklyn Daily Eagle*.

Mr. Barshay: Would you be good enough to keep your voice up?

A. I say I read a good deal in the *Mirror* and the *Brooklyn Daily Eagle* regarding this matter.

Q. Has it been in regard to this particular case?

A. Yes, sir.

Q. You answer me rather emphatically. Do you have an opinion from some of the matter that you have read?

A. Yes, sir.

Q. Does that opinion go to the guilt or innocence of the defendants, without stating it?

A. Yes, it is an opinion, quite an opinion.

Q.—And that has been an opinion that has been formulated [fol. 924] by reading of the newspaper articles?

A. That is right.

Q. Would it be that kind of an opinion that would require evidence on the part of the defendant to dissipate?

A. Very little. Will you repeat that again, please?

Q. Is that kind of an opinion that you have that would require evidence in behalf of a defendant to get rid of that opinion, to remove it from your mind?

A. No.

Q. Is it an opinion that goes to the guilt or innocence? I think you said it was.

A. That is right.

Q. Is it an opinion that would require evidence to remove?

A. I doubt very much.

Q. Do you think you can remove the opinion without evidence?

A. Remove the opinion without evidence?

Q. Yes.

A. I do not need any evidence to remove the opinion. I have already made up an opinion.

Mr. Rosenthal: I challenge for cause.

The Court: Reserve your challenge to the conclusion of the examination by Mr. Turkus.

Mr. Rosenthal: All right, sir.

Mr. Cuff: May I suggest that we would only be wasting time with this juror.

The Court: I do not understand it myself, yet.

Q. Mr. Bernhardt, you have a very definite opinion about this case?

A. That is right.

Q. And no matter what happened in the court-room you [fol. 92b] would be having the same opinion?

A. That is right.

Q. That was the way I understood you.

A. That is right.

Q. So that no matter what either side did, you have your opinion so fixed that you could not be swayed one way or the other?

A. That is right.

By the Court:

Q. You mean as to the guilt or innocence of a defendant in this case?

A. That is right.

Q. On this charge?

A. Right.

Mr. Rosenthal: I challenge for cause, your Honor.

The Court: He has not shown whether or not he could lay it aside.

Mr. Rosenthal: He said he could not.

Mr. Cuff: He said he could not.

Q. You mean you cannot lay aside that opinion?

A. No, sir.

Q. You cannot decide this case on the evidence alone?

A. No, sir, the opinion I have had and read.

Mr. Cuff: I object to any statement.

The Court: Try the challenge.

CHARLES H. BERNHARDT, being duly sworn, testified as follows:

By Mr. Rosenthal:

Q. Mr. Bernhardt, you, in answer to Mr. Turkus's question stated that you had an opinion which you could not remove; is that correct?

A. Right.

[fol. 926] Q. If you were asked the same questions as already propounded to you before you were sworn, would you give the same answer?

A. Identically.

Mr. Rosenthal: That is all.

The Court: Sustained.

SAMUEL F. STRONGIN, of the Hotel St. George, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

The Court: Is your brother or uncle former partner of Judge Moskowitz?

The Talesman: No, sir.

By Mr. Turkus:

Q. Do you know Sidney Strongin?

A. No, I am afraid I don't.

By the Court:

Q. Your relatives are not in the window pane business?

A. No.

By Mr. Turkus:

Q. Mr. Strongin, on the trestle board your address is listed as that of the Hotel St. George, and I think that is the address you gave to the stenographer.

A. Correct.

Q. Have you lived at the Hotel St. George for a number of years?

A. One year short a few days.

Q. So that you have lived in Brownsville recently?

A. Four out of the last five years.

Q. And are you there on a lease, a yearly lease arrangement?

A. No, I am there on a weekly arrangement, but that will be my permanent residence.

[fol. 927] Q. You are listed as an audit clerk. Is it for the St. George Hotel?

A. No, for a private firm.

Q. Do you mind stating the name of the concern?

A. The Metropolitan Tobacco Company.

Q. And where does the Metropolitan maintain its office?

A. 22 Fourth Avenue, New York City.

Q. What section would 22 come out in?

A. Right near Wanamaker's, 8th Street.

By the Court:

Q. Right opposite?

A. Yes.

By Mr. Turkus:

Q. Prior to living at the Hotel St. George did you reside in Brooklyn?

A. Well, for a few months I resided in Manhattan, and prior to that I lived in Brownsville.

Q. So that you lived in Brownsville during September of 1936?

A. That is right.

Q. What street did you live on?

A. Grafton.

Q. Near what other street?

A. Near Livonia.

By the Court:

Q. You are a neighbor of Broadway Rose?

A. I do not know whether to claim that as a distinction or not. What would you say, your Honor?

By Mr. Turkus:

[fol. 928] Q. I think what was intended was that you are familiar with the corner of Saratoga and Livonia?

A. I am.

Q. You knew the name of the proprietor of that store?

A. Right.

Q. You knew and heard various things about persons who hung out or congregated at that corner?

A. I did.

Q. And, having lived in Brownsville for the past five years, living there four years, you have seen and heard various things which made an impression upon you, I assume?

A. Right.

Q. And you have heard in that area the mention of various names that you have heard mentioned by the lawyers in the case? Having lived in Brownsville for four out of the last five years, you have some impressions about this case, haven't you?

Mr. Climenko: Object to the form of the question.

A. Persons, yes.

By the Court:

Q. How far were you from Rose Gold's place?

A. Two blocks.

Q. You were nearer Howard Avenue?

A. Well, Howard Avenue would be to the west of Grafton Street where Saratoga would be to the east of Grafton Street.

Q. Grafton Street runs into Howard Avenue?

A. It runs parallel with Howard.

Q. Doesn't it end there?

A. No. I believe that Howard Avenue runs into Kings Highway and ends over there. No, I am wrong. It runs quite a distance parallel to Grafton Street.

[fol. 929] Q. And they run together at one point, at any rate, two blocks from Saratoga and Livonia?

A. Yes, that is very definite.

Q. So you are familiar with the situation there?

A. Yes.

Q. Did you patronize that store?

A. Not to any great extent.

Q. But you have been in it?

A. Oh, surely.

By Mr. Turkus:

Q. Did you deal in the Brownsville district in other stores when you lived there, other merchants?

A. Sure.

Q. Have you an opinion in regard to the matter?

A. In regard to this case?

Q. Yes.

A. No, I still have an open mind on it.

Q. Have you any contacts in the Bronsville-East New York area of Brooklyn?

A. I have friends living there.

Q. And in what particular section of Brownsville do they live in, what street?

A. They live in East New York, not in Brownsville.

Q. Do you visit there frequently?

A. Quite frequently.

Q. At the time that Joseph Rosen was murdered, was there any conversation that you heard about the case?

A. Naturally it was a topic that concerned the neighborhood, and I suppose I did discuss it with people, friends of mine and so on.

Q. Do you have any contacts in the garment district?

A. None at all.

Q. Did you have any in the past?

A. No.

[fol. 930] Q. Do you know anybody on the Brooklyn waterfront?

A. No one.

Q. Or anyone in the clothing business?

A. No one.

Q. Clothing trucking business?

A. No.

Q. How often do you get into this Brownsville area, would you say, once a week?

A. No, not as frequently as all that.

Q. Twice a month?

A. I may still do some shopping on Pitkin Avenue, which is the main thoroughfare there.

Q. Do you have social contacts there too, people that you know?

A. At present no, none at all in Brownsville.

Q. In East New York?

A. Yes, friends.

Q. And are those friends and social contacts that you have kept up over the years of association that you had in that area when you lived there?

A. That is true.

Q. Since your name appeared on this special panel and you got your notice, did anybody speak to you about the case?

A. No, sir.

Q. How long have you been employed by the Metropolitan?

A. Oh, a matter of eleven or twelve years.

Q. And you say your work is auditing? Is that similar to accounting work?

A. There is a slight distinction in the sense that I check up other men's work, check up branch work. We have about a dozen branches, and part of my job is to check up on their records of various stores.

Q. Does that necessitate your visitation to those various [fol. 931] places?

A. It did up until about two years ago, at which time I was switched to a job which keeps me in the main office.

Q. So that your work is checking with all these branch stores?

A. I would hardly call them stores. It is offices, warehouses and office combined.

Q. The centers that distribute the products?

A. That is right.

Q. And you check on the books of those various distribution—

A. Various records of these branches.

Q. Have you had some college course?

A. I have. I have an arts degree.

Q. And has that been one of the New York universities?

A. City College.

Q. Are you married, Mr. Strongin?

A. No, sir.

Q. Are you in sympathy with the enforcement of the Penal Law of the state?

A. Definitely.

Q. There are nine lawyers here representing these three defendants, and I have mentioned—

Mr. Talley: We cannot hear.

Q. I have mentioned their names to other prospective talesmen. Do you know Mr. Barshay, who was an Assistant District Attorney at the time Mr. Geoghan was District Attorney?

A. I do not; I did not?

Q. Or Mr. Bertram Wegman?

A. No.

Q. Who was an Assistant United States Attorney?

A. No.

[fol. 932] Q. Or Mr. Climenko, who is associated with Mr. Wegman?

A. I know none of the defense lawyers.

Q. None of the nine?

A. That is right.

Q. Do you know anybody who works in their offices?

A. I do not.

Q. Do you know any member of the bar intimately who practices and specializes in the defense of criminal cases?

A. No, sir.

Q. Did you know the prior District Attorney of the county, Mr. Geoghan, personally?

A. No, I did not.

Q. Did you know any member of his staff?

A. No.

Q. Do you know Judge O'Dwyer, the District Attorney of Brooklyn?

A. Do not.

Q. Do you know any member of his staff?

A. I do not.

Q. Have you heretofore had the benefit of listening to a Judge's charge on the law?

A. No, sir.

Q. I take it, then, that you have never served as a juror in a criminal case?

A. Or in a civil case.

Q. If accepted as a juror in this case, will you take the law from the Judge in its every aspect?

A. I will.

Q. And will you endeavor conscientiously to apply it to the facts in this case?

A. I will.

Q. For example, I take it that you have heard enough discussion by the District Attorney and the nine lawyers in the case about the presumption of innocence?

A. Yes.

[fol. 933] Q. Just because there are nine lawyers in the case, and three of them sum up to the jury, is it going to have three times the effect because it is thrice repeated?

A. It will not.

Mr. Barshay: I object to it. There will be no repetition. I am sure Mr. Rosenthal is very original, and I am sure Judge Talley is, too.

Mr. Rosenthal: Not only that, I represent only one defendant, so there is no repetition. I object to the form of the question.

The Court: Sustained.

Q. If you hear the same argument three times——

Mr. Barshay: I object to it again.

Mr. Turkus: I have not finished it.

Mr. Barshay: All right, go ahead, Mr. Turkus.

Q. —by any battery of counsel, will it be three times as forceful because it has been repeated?

Mr. Barshay: Same objection. He is assuming we are going to repeat, parrot-like.

The Court: Overruled.

Mr. Barshay: Exception.

A. The answer to that is no.

Q. Now, as has been frequently said here, and you do not have to take my word for it just because I ask the question, do you have any bias or any fault to find with the prosecution wherein the District Attorney breaks the case from the [fol. 934] inside and uses the testimony of a co-participant against the remaining defendants?

A. I have not.

Q. Do you have any fault to find or any inherent prejudice against the testimony of an accomplice or a co-participant in the crime as would cause you to reject that testimony under all circumstances?

A. I have no such prejudice.

Q. Mr. Strongin, is there anything about your past or present association which would in any wise cause you any reluctance or fear to render a verdict that would be in consonance with your concept of justice in the case?

A. There is nothing; there has been nothing.

Q. In other words, if the District Attorney of the county satisfies your mind beyond a reasonable doubt that there are three guilty men at this bar of justice, guilty of the crime of murder in the first degree, would you have any fear in so saying?

A. No such fear.

Q. No hesitation or reluctance?

A. None at all.

Q. So that you have no scruple, conscientious or otherwise, against capital punishment?

A. I have none.

Q. Will you let anybody talk about punishment in the jury room when you are debating the issue in the case, guilt or innocence? Do you hear me?

A. Yes, I hear you. I do not think I got the trend of the question, though.

Q. You said you will not permit punishment to influence your verdict in the case?

[fol. 935] A. You mean punishment against the people on trial?

Q. That is right.

A. No.

Q. By the same token, would you let anybody else talk punishment in the jury room when you are debating the issue of guilt or innocence?

The Court: If the Court instructs him he must not consider it—you will follow that instruction?

The Talesman: Definitely will follow such instruction.

Q. Just because a defendant in a case has been found guilty of prior crime and sentenced to a long term in jail, would you be inclined to relax your duty as a juror because of his presence in jail?

A. I would not.

Q. Would you deviate from a proper decision because of that fact?

A. No, sir.

Q. With respect to accomplices, will you look the accomplice over with care and caution, look to his background, his former associates, the crimes he committed, and everything that would go to affect his believability? Will you look that over?

A. I will consider it.

Q. Will you use all the care and caution with weighing that kind of testimony?

A. I will.

Q. And will you give to the defendants in the case every Constitutional right and safeguard that the Judge will charge you about?

A. I will.

Q. For example, will you give them the presumption of [fol. 936] innocence and the doctrine of reasonable doubt and the fact that they have no burden in the case, and every safeguard that the Judge says defendants must have in a criminal case?

A. I will give them such consideration.

Q. In looking over the testimony of an accomplice with care and caution, will you apply common sense and understanding to the situation here?

A. I will try.

Q. In other words, is your state of mind such by now that you may see some type of character that you have not had any kind of dealings with in the past or any experience with in the past; is that right?

A. Right.

Q. And with those kind of individuals and in the situation before the Court you will use common senses and understanding in looking the problem over, won't you?

A. I will try.

Q. You have had college experience?

A. Yes.

Q. Gotten a degree?

A. Yes.

Q. You are doing work of importance, checking up on the work of other men?

A. Right.

Q. Do you feel that you can do such a job?

A. I feel very definitely I can.

Q. If accepted as a juror in the case will you conscientiously endeavor to arrive at a just result?

A. I will.

Q. Will you listen to fair and reasonable discussion by the other jurors?

A. Yes.

Q. Is there anything about the nature of your work that [fol. 937] is going to make it impossible for you to devote your energies to the trial? The reason I ask you that is

that my associate slipped me a notice that you applied for an excuse.

A. Yes, on the basis of some present work which was due then.

Q. How about your frame of mind now? If taken as a juror will you devote yourself to the case?

A. Yes, it won't work any personal hardship on me.

Q. In other words, if we get you in the jury box can we count on a hundred per cent cooperation from the standpoint of mental concentration on the case?

A. Yes.

Q. Nobody wants anyone else to be a rubber stamp or to have anybody talk him into anything. But will you listen to common sense argument and reasonable argument by the other jurors?

A. I will.

Q. Without any rancor or not being arbitrary? Assuming that you are accepted as a juror in the case and you hear all the evidence and you hear the defense lawyers tell you the reasons why they say that there is a doubt in the case, and you listen to the prosecutor draw his inferences from the testimony, you listen to the learned Court tell you the law, you talk the case over, as men do with a problem, and weigh it in the jury room, and you come to the conclusion that the guilt of these defendants, Buchalter, Weiss, and Capone, has been established to your satisfaction beyond a reasonable doubt; will you say so with your verdict?

A. I will say so.

[fol. 938] Q. Without any fear, hesitation, or reluctance?

A. That is right.

By Mr. Barshay:

Q. Mr. Turkus has inquired of you whether or not the force of the argument of three lawyers would affect you to the point where the odds would be three to one. Remember he asked you that question?

A. Right.

Q. You are not influenced by the suggestion in that question, are you?

A. I am not influenced by mere numbers, no.

Q. That is right. You understand that if he wanted to he could have given us each a separate trial and he would

not have been burdened with nine lawyers. You understand that, don't you?

A. I do not understand that, as a matter of personal knowledge. I do not know whether it is within his discretion or not.

Q. It is, but it has nothing to do with this case.

Mr. Turkus: Just a minute. I object, Mr. Barshay—

The Court: Sustained.

Mr. Barshay: May I proceed, Judge?

The Court: Yes.

Q. Now, Mr. Strongin, you said a little while ago that because of what you read and discussed and heard discussed you have formed an opinion?

A. Well, yes.

Q. Is that opinion detrimental to any of the defendants?

A. It is not.

[fol. 939] Q. It is not?

A. Because, if I may say so, I also said I would listen to the case with an open mind.

Q. You came to that later.

A. I see.

Q. But any impression that you formed, any impression at all, before you receive the benefit of the Court's instructions that a juror must be of an open mind, was that impression to any degree detrimental to any of the defendants?

A. No.

Q. So that, having read the *Mirror*, do you—

A. I did not say that.

Q. I beg pardon.

A. I was not interrogated as to the papers I read.

Q. Maybe I mixed it up with the other juror. Did you read the *Mirror*?

A. Very, very rarely.

Q. Did you read any other paper?

A. The *Times* and the *Sun*.

Q. And did any of those papers, to your knowledge, contain articles concerning the defendants or the case?

A. Except as to the trial being in progress.

Q. And before that?

A. Well, at the time of the commission of this deed, naturally there was a big write-up on it.

Q. And it was the subject of discussion in places where you visited?

A. Right.

Q. Now, keeping those things in mind, sir, did you accept the truth and accuracy of those things you read or heard?"

A. I was inclined to accept them at face value.

Q. And, being inclined to accept them, I take it you [fol. 940] formed some conclusion with respect to them, have you not?

A. Probably did, yes.

Q. And is that conclusion detrimental to the defendants or any of them?

A. I still say no.

Q. Well, did anything occur which dissipated the conclusion you formed—yes or no?

A. No, nothing occurred except that I know that the trial cannot be conducted in the newspapers.

Q. In other words, you feel now, I take it, that you can lay aside any impression you may have had; is that your answer?

A. To the best of my belief.

Q. To the best of your belief? Does that indicate some doubt in your mind?

A. No, none at all.

Q. Now, sir, can we take it that you are positive no matter what you heard or read will not be part of your judgment in this case?

A. That is right.

Q. And if the testimony on the stand should in any wise conflict with what you read, you promise me, sir, that you will be able to dissipate what you read completely?

A. Yes, that is right.

Q. That is your own idea about it?

A. It is not an idea; it is a conviction.

Q. Have you given the matter some thought before you were placed in that chair?

A. Of course.

Q. And as you heard the other jurors being questioned, were you thinking along the same lines?

A. Yes.

[fol. 941] Q. Free of prejudice and free of bias?

A. Right.

Q. Now, as you sat in this part of the room day after day, and you were able to hear in great detail the questioning of the prospective jurors, were you still of the conviction that you can dissipate anything you heard or read?

A. I am.

Q. Would you require a lesser amount of proof from the District Attorney by virtue of what you heard or read?

A. That may be true.

Q. So that, can we go one step further and say you may want some explanation forthcoming from the defendants?

A. I believe so.

Q. You have already heard, sir, up to this very minute many times repeated that a defendant need not come forth with any explanation of any charge against him?

A. Yes, I know that.

Q. You had that in mind when you answered my question?

A. Yes.

Q. And yet you expected that some explanation should be forthcoming from some or all of these defendants?

A. Well, when I gave the answer to your question I did not necessarily mean that the defendants themselves should provide such reason.

Q. I understand that. You mean somebody on their behalf?

A. Quite right.

Q. It happens to be that neither they nor anyone on their behalf need make any explanation at all.

A. So I understand.

Q. They can remain in the dignity of their silence. You [fol. 942] cannot draw one unfavorable inference against them.

A. Right.

Q. Are you clear about that now?

A. Very clear about it.

Q. You still expect that something should be forthcoming by someone on behalf of the defendants in explanation of the charge; isn't that so?

A. I answered that before.

Q. What?

A. I say I did answer that before.

Q. And you still are of that opinion, isn't that so, sir?

A. Yes.

Q. To make it clear, you expect someone to be offered on behalf of either of the defendants to come forth on the witness stand and make an explanation here, otherwise you would require less proof in this case against them; isn't that so?

A. Of course, you are trying to show me up as prejudiced. I still say I am not. I still say I can enter this trial with an open mind.

Q. I am sorry you come to that conclusion, sir. Frankly, you are very satisfactory to me personally. I was not trying to show you were prejudiced, because you don't look prejudiced, but you volunteered the answers, did you not, sir?

A. Not until you led me to them.

Q. You are not making this a personal issue, I take it?

A. No, of course not.

Q. You were here all the time and you knew that nobody need explain a single thing, either personally or through witnesses?

A. That is right, I know that.

Q. I did not lead you into that, did I?

A. No.

[fol. 943] Q. Knowing that, sir, without being led into it, yet you said you would require someone to offer some testimony. Didn't you say that?

A. I did.

Q. That is not fair, is it?

A. I am aware of the conflict. I realize that, but I still stick to my previous answers.

Q. For which I don't criticize you at all. You have a right to.

A. Yes.

Q. I take it you should not find fault with anyone who is trying to get a fair juror?

A. No, none at all.

Q. There is no way I can photograph your mind.

A. No.

Q. Now let me ask you, Mr. Strongin, would you require less proof because of what you read, if no explanation is forthcoming from any source whatever?

A. Would I require less proof?

Q. Yes, on the part of the District Attorney in this case because of that you read, your intimate association there?

A. No, I would not require less proof.

Q. You still require the District Attorney to sustain his burden beyond a reasonable doubt?

A. That is right.

Q. No doubt about that? How often have you been at that corner?

A. Well, as it happens, I had to of necessity be there every night on my way home, because that was the entrance or exit, from the station.

Q. Did your company do business with the owner?

A. Yes, that is right. We sold them; we sold them tobacco products and other products.

[fol. 944] Q. So you have more than a passing acquaintance with the situation?

A. Right.

Q. You told Mr. Turkus by reason thereof you formed an opinion.

A. As to the crime, no.

Q. No, not this crime. We did not get to that yet.

A. Oh. Well, I had a definite opinion as to the character of the people hanging around there.

Q. That is detrimental, is it not?

A. Not to the case at issue.

By the Court:

Q. You heard the names? You heard some of the names mentioned in questioning other jurors?

A. Yes.

Q. Did you know any of those people personally?

A. Not personally.

Q. Any dealings with them?

A. None whatsoever.

Q. They never crossed the same path, ran into one another?

A. Not to the best of my knowledge.

Q. You never had any conflict with them?

A. No, sir.

By Mr. Barshay:

Q. Well, at any rate, you formed a bad impression of them?

A. Yes, I admit that.

Q. And if their names become a part and parcel of this case—

A. That is true.

Q. —you will start off with a prejudice, won't you, because of the mention of their names, plus the fact that you [fol. 945] have gained an impression about them?

A. May I submit that the prejudice may hold true against some of the potential witnesses, true, so that is not necessarily against one side.

Q. If I knew who they were, I could answer, but I am in the dark as much as you.

A. Some of the names that have been mentioned as being called by the prosecution.

By the Court:

Q. Reles and Strauss?

A. That's right.

Q. Reles?

A. Yes, your Honor.

By Mr. Barshay:

Q. You realize, Mr. Strongin, that I mean I do not know more about this case than you do. You understand that, don't you?

A. (No answer).

Q. I mean it is a secret for the District Attorney to keep from defense counsel too. You understand that now, don't you?

A. Yes.

Q. I do not know whom he is going to use. I am guessing, and I do not know your attitude toward any one of them, good or bad.

A. Well, I say without trying to defend my own position that if there was such a prejudice it does not extend to only one side.

Q. The law is the jury should hold a prejudice against neither side.

A. Right.

Q. You are not that type of juror, are you, just at present, from your own angle?

A. Shall I substitute the word "impression" instead of prejudice?

[fol. 946] Q. I will be grateful to you if that is how you feel.

A. Very definite impression.

Q. You say you have a very definite impression about some of the people involved in this case?

A. As to the antisocial character of the people, yes.

Q. Will it cause you to weigh any of the evidence, because of that prejudice, to the detriment of the defendants too?

A. No, not to the detriment of the defendants.

Q. To the benefit of the defendants?

A. No, sir. I will weigh it very carefully.

Q. And if it should develop that someone takes the stand and speaks of association with any one of the defendants and you having an anti-social attitude toward them because of their being anti-social, would you also let it out to the defendants?

A. No.

Q. You would separate that?

A. That is right.

Q. You would be able to divide between the prosecution and the defense, would you?

A. That is right.

Q. Have you ever been a juror before?

A. No.

Q. Have you ever been a victim of any crime?

A. No.

Q. Has your company?

A. Very definitely yes.

Q. And has your company had a branch in Brooklyn which was the victim of a crime?

A. Our Warren Street branch, yes, not the branch itself, [fol. 947] but the delivery trucks have been held up any number of times.

Q. Warren near 5th Avenue; is that right?

A. That is right.

Q. Do you remember me, sir?

A. Do I remember you?

Q. Yes.

A. I do not believe I have seen you before this case.

Q. Do you know whether or not I was the one who prosecuted those defendants?

A. I would hardly be in a position to know inasmuch as I did not make any appearances in court for the company.

Q. Were you in any way a witness in that case?

A. No.

Q. Did you have anything to do with taking the inventory in that case?

A. Possibly, if I knew which one case you had in mind.

Q. The one near 5th Avenue.

A. But there have been so many cases there.

Q. I am sorry, I could not keep track of all of them.

The Court: Has that any bearing on this case?

Mr. Barshay: Maybe.

Q. By virtue of your company—

The Court: Was not that the truck taken from the Eastern Steamship Lines, drove along Canal Street?

Mr. Barshay: Not the one I had, Judge.

The Court: And when it got to Brooklyn hijacked? Had nothing to do with this case.

Mr. Barshay: That is right.

[fol. 948] Q. By virtue of your company being the victim of a crime many times, have you any prejudice against people charged with crimes generally?

The Court: On the basis of charge alone, not evidence.

A. On the basis of the charge alone, no.

Q. Mr. Strongin, if the Court shall tell you that character is not an issue in any case unless and until it is put in issue by the defendants or any of them, do you think, sir, you could follow that law?

A. I believe so.

Q. In other words, no matter what you may think about people, it has nothing to do with the charge on trial?

A. Right.

Q. Unless and until he puts his character in issue, either himself or through witnesses, and you won't consider it?

A. That is right.

Q. Have you at any time studied any law?

A. Well, I did have a course in commercial law at college.

Q. Where did you have that course?

A. Up at City College.

Q. 23rd Street Branch?

A. No, the Uptown Branch.

Q. And in connection with the commercial law, did you ever have occasion to discuss criminal law?

A. No.

Q. Do you know any lawyers intimately?

A. Well, a brother of mine is a lawyer.

Q. May I know his first name?

A. Yes, Max.

Q. And his office address?

A. I really don't know, to be frank with you.

[fol. 949] Q. Is he a Brooklyn lawyer?

A. No, he practices in Manhattan.

Q. Do you go to his office often?

A. No, I have never been there.

Q. I take it you are on social terms with your brother?

A. Yes.

Q. Have you told him that you were called as a juror?

A. Oh, sure.

Q. Has he expressed any opinion with respect to this case?

A. No, no opinion at all.

Q. Did he show a familiarity with the case?

A. No sir.

Q. Or with the people?

A. I believe . . . expressed some opinion concerning one of the defense lawyers.

Q. Was it the questioner?

A. Merely an opinion as to the man's ability.

Q. Opinion as to his ability?

A. That is right.

Q. My being excluded, I take it he said the rest were very good. Did you have more than one talk with your brother about this case?

A. No, sir, just one.

Q. Outside of that you say he has not discussed a single thing with respect to it?

A. Not a single thing.

Q. Did you tell him that you were going to apply for an excuse?

A. I talked with him after the excuse had been rejected.

Q. And the reason for your excuse, I take it, now has [fol. 950] been dissipated?

A. Oh, yes.

Q. So you have not talked to him any more about it?

A. No.

Q. Did your brother ever tell you about any criminal case he had?

A. No.

Q. Would you, with a great deal of care, weigh the testimony of any person who takes the stand?

A. I would.

Q. You would not give any weight to the indictment or charge against him?

A. No.

Q. Would you with a great deal of care take the testimony of people who confess, out of their own mouths, prior perjury, robbery, murder, and other crimes?

A. I would weigh it with due caution.

Q. Even if he is an accomplice or he is not an accomplice?

A. That is right.

Q. And in weighing it with due caution, will you take into consideration what prompts a man to testify for the prosecution?

A. That would come under the head of caution, I suppose.

Q. Still be additional caution?

A. I refuse to use that word, additional caution.

Q. Well, if in addition to the fact that he himself may be escaping punishment for what he himself did, he also is being given exceptional treatment, to a man who has been leading a criminal life, you would add a little caution to the caution you already used? It is all "if."

A. Well, no doubt that would be a factor in considering it and weighing it very carefully.

[fol. 951] Q. I want to know would it be an additional fact?

A. It probably would be.

Q. You would want to know, Who is he? What is the source of this testimony that is being given here? wouldn't you?

A. I would.

Q. You will ask yourself: Why should I accept it unless it meets every test that a reasonably intelligent juror places upon such testimony? isn't that so?

A. That is right.

Q. That is being fair to the defendant. And that goes for the alleged corroborating testimony too, doesn't it?

A. Yes.

Q. So that if a person takes the stand and he is offered as a corroborating witness, out of his own mouth he admits he was a perjurer before, you would give him the additional caution, wouldn't you?

A. I would.

Q. That you give to the others?

A. I would.

Q. In that way you would be looking for a reason for doubt arising out of the evidence furnished by The People?

A. Yes.

Q. Now, Mr. Turkus has brought out in response to the questions that I have been propounding to other jurors, the inquiry whether or not you would be prejudiced against our particular client by virtue of a present incarceration.

A. I would not.

Q. For a long term. That would not affect your judgment in any degree?

A. No.

Q. Except as charged by his Honor?

[fol. 952] A. If instructed by his Honor, then I would give it weight.

Q. That may go to his credibility, that is all. Otherwise you bear no prejudice against him at all?

A. None at all.

Q. And no matter what else may have happened, the only charge he is facing here is the one contained in the indictment; do you know that?

A. Yes.

Q. It takes a lot of courage, sir, to say not guilty in any case, doesn't it?

Mr. Turkus: Just a minute.

A. No, sir.

Q. Wait until I finish.

Mr. Turkus: I thought you had finished.

Mr. Barshay: You made the same mistake I did.

Mr. Turkus: I do not make mistakes that you do.

The Court: Reframe the question.

Q. Will you exercise courage in arriving at a verdict if that verdict should be one of not guilty, because you as an individual juror failed to be convinced by The People's proof that the defendant Buchalter is guilty beyond a reasonable doubt?

A. I would not be afraid to say so if I reach that conclusion.

Q. And that is so irrespective of the number of gentlemen who may disagree with you?

A. That is true.

Q. You have as much right to your opinion as anybody else. You can reason and argue without being stubborn,

[fol. 953] of course. You will guard the defendant's rights as much as you will guard the prosecution's?

A. I will.

Q. We each have an equal right here. Is that correct?

A. Yes, I understand that.

Q. If you are chosen as a juror, you will look after those rights that belong to us, won't you?

A. Right.

By Mr. Rosenthal:

Q. Mr. Strongin, you live about two blocks away from Saratoga and Livonia Avenue?

A. That is true.

Q. And you had occasion to visit the premises situated on the corner there?

A. Just to purchase an odd item.

Q. And you knew the individual that conducted that store?

A. I did not; I knew of her.

Q. You knew of her and you knew the attendant that waited on you?

A. Yes.

Q. Whoever it might be that was in charge of the store, [fol. 954] you knew by reason of the fact that you went in and purchased things; isn't that true?

A. That is right.

Q. And you knew certain individuals whose names have either been mentioned while you were in the court-room by Mr. Turkus or by some other counsel for the defense? By name you knew them?

A. Yes.

Q. And you had formed an opinion as to those particular individuals and as to their character?

A. Right.

Q. You said to Mr. Turkus at the outset that that opinion was a prejudice against these individuals. That was your own words, wasn't it? That the opinion amounted to a prejudice, isn't that what you told Mr. Turkus?

A. I may have.

Q. And then when Mr. Barshay was questioning you, you also reiterated the fact that there was a prejudice there and subsequently you said he had led you into saying that.

A. May I qualify it then?

Q. No, but just please, we will get along very quickly; if there is anything about my questions you do not understand, just tell me and I will repeat them, —

A. All right.

Q. —gladly, to you, or have the stenographer repeat them. Now, then, the issue here, Mr. Strongin, is this: Assuming now that the particular location, in view of the fact that the prosecution has mentioned it throughout in questioning jurymen, becomes a part of the issue in this case, and the individuals and the characters around there become part of the situation in this case, in view of the [fol. 955] fact that the prosecution has questioned you, unquestionably it has something to do with what might transpire; isn't that right?

A. Right.

Q. Now, isn't it a fact, candidly, Mr. Strongin, that because of your knowledge, first-hand knowledge, of the particular location and of some of the people or things that may transpire in this trial, either the amount of the evidence which the prosecution would have to adduce is less or more, or the amount which the defendants would have to produce is less or more than what it would be if you did not know any of the individuals, any of the surroundings, any of the locality? Isn't that true, sir?

A. True to a certain extent.

Q. Yes, the fact is that you would permit, subconsciously or otherwise, in the jury room, your knowledge, gleaned from a knowledge of the neighborhood and some of the individuals, to creep into your deliberations, as honest as you are?

A. Consciously I would not.

Q. But there is that possibility of your mind being in that situation? That is why you said you had a prejudice, isn't it?

A. That is true.

Q. That is true, sir?

A. That is true.

Mr. Rosenthal: I challenge for cause.

Mr. Talley: All joint.

The Court: Try the challenge.

(SAMUEL F. STRONGIN was then sworn.)

[fol. 956] By Mr. Rosenthal:

Q. Mr. Strongin, one other thing before reiterating the question. You realize there is nothing against your integrity because of your knowledge of a certain, particular surrounding——

A. I take that for granted.

Q. —for you to say candidly what is in your mind. Having that in mind, now that you are under oath, if the questions which Mr. Barshay asked you and which were supplemented by the questions that I asked you, were reiterated, you would give the same answer, is that true, sir?

A. I would.

Mr. Rosenthal: That is all.

The Court: Any more from defense counsel?

Defense Counsel: No questions.

Mr. Turkus: I submit so far it is in the realm of speculation.

The Court: Have you any questions?

Mr. Turkus: Yes, I will just ask a few.

By Mr. Turkus:

Q. I think we got to the point, Mr. Strongin, where you said you had a college degree?

A. Right.

Q. And you did this audit work?

Mr. Rosenthal: Would you mind keeping your voice up, Mr. Turkus?

Q. And I think that you told me that you could try this case upon the evidence, free from any impression or opinion [fol. 957] ion that you might have had in any shape or form.

A. True.

Q. Is that right? Now can you do that?

A. I can.

Q. Lay aside any impression that you might have had, regardless of the source, and try this case from the testimony adduced in the court-room?

A. I can.

Mr. Turkus: I argue that the cause challenge does not properly lie.

Mr. Rosenthal: And I argue to the Court that the outside knowledge of this jurymen to a situation which may arise in this court, due to the questioning of the District Attorney, is of such a nature that I believe the challenge should be sustained on the same ruling as was made by the Court in the case of the jurymen that Mr. Turkus challenged for cause.

Mr. Turkus: I do not understand this.

The Court: Do not argue about it. I am just waiting for both sides to complete their questioning. Everybody through?

Mr. Rosenthal: Yes.

The Court: The challenge is overruled.

Mr. Barshay: We take an exception.

Mr. Turkus: Mr. Strongin is satisfactory to The People.

The Court: Other counsel have not completed.

By Mr. Rosenthal:

Q. You are college-educated, are you not, sir?

A. Yes, sir.

Q. That fact was brought out several times by Mr. Turkus; is that correct, sir?

A. Right.

[fol. 958] Q. Now by Mr. Rosenthal, but not then. In any event, you yourself chose the word "prejudiced," did you not, sir, when you answered Mr. Turkus?

A. I really don't know.

The Court: Pardon me. The challenge was made, was tried, and was decided. Your line of questioning will have to proceed otherwise.

Mr. Rosenthal: May I respectfully except to the Court's ruling?

The Court: Yes.

Mr. Rosenthal: In view of the fact that Mr. Turkus succeeded us in the questioning and the answers are contradictory.

The Court: All had an opportunity. The challenge was fully tried and decided. That is the end of that incident.

Mr. Rosenthal: I respectfully except to your Honor's ruling.

Q. Now, on the question of the quality of the evidence, when Mr. Barshay questioned you did you not say, sir, in answer to one of his questions that the quality, the amount of evidence that would have to be produced in this case either by The People or the defendant would be different because of your knowledge of the individuals? Did you not say that in answer to Mr. Barshay?

A. I may have said so.

Q. Well, you were fully cognizant of your answer when you made it, sir?

A. Yes.

[fol. 959] Q. Were you not?

A. Yes.

Q. And did you mean that when you made that answer to Mr. Barshay?

A. Yes.

Mr. Rosenthal: I again challenge for cause.

The Court: Try the challenge. We will reserve the trial of that challenge until all questions are finished. We cannot have constant jumping up and trying one challenge after the other. We will have a general trial of challenge for cause when all counsel finish.

Mr. Rosenthal: They all join.

Mr. Barshay: We have no further questions. We will rest with Mr. Rosenthal.

The Court: You are all through?

Mr. Talley: Yes.

The Court: For all purposes? All right, try the challenge
(Mr. Strongin was again sworn.)

By Mr. Rosenthal:

Q. Mr. Strongin, you have been again sworn, and if I were to repeat the last several questions which I asked of you prior to your being sworn, would your answers be the same?

A. I believe so; I know so.

The Court: Everybody through?

Mr. Talley: All through.

The Court: There will be no further jumping up and [fol. 960] down. The Court understood the talesman. His prejudice, so-called, relates, as he stated in the course of his questioning, to a proposed witness for The People,

but does not activate against the defense. The challenge is overruled.

Mr. Rosenthal: Exception.

Mr. Talley: Respectfully except.

Mr. Rosenthal: With an exception to the Court's ruling overruling our challenge for cause, we peremptorily challenge the juror.

Mr. Turkus: Judge, I am going to ask your indulgence. There has been an epidemic of colds at this counsel table because of the fact that we are closely pushed in. I am trying this case. If anything happens to me that I go under, we won't have any trial lawyer in here.

The Court: You won't have any voice. You mean you want a recess?

Mr. Turkus: I think it would be wise. They can hardly hear me.

The Court: I have a cold too, but I don't have to use [fol. 961] my voice. You are rapidly losing yours. I think it best to rest it up until tomorrow morning.

Mr. Turkus: We have the holiday of Atonement starting tomorrow evening. You have to allow for traveling.

The Court: I will allow for traveling.

MAX L. POLLOCK, of 50 East 19th Street, Brooklyn, called to the stand to be examined as to his qualifications.

The Court: For the reason you requested, we will recess now. The defendants are remanded.

Gentlemen of the jury, do not discuss the case, read nothing about it, listen to nothing on the radio.

Ten o'clock tomorrow morning.

(Recess taken until Tuesday, September 30, 1941, at ten o'clock a. m.)

[fol. 962]

Brooklyn, N. Y., September 30, 1941.

Trial Resumed

The Court: The Court has received word that Mr. Turkus is confined to his home with a heavy cold and will not be out today. I am sorry to disappoint you gentlemen, but the

case will have to go over until Thursday (October 2nd), at ten o'clock.

Please remember the previous admonitions, gentlemen, about reading or conversing about the case.

The defendants are remanded.

(Adjourned to Thursday, October 2, 1941, at 10 a. m.)

[fol. 963]

Brooklyn, N. Y., October 2, 1941.

Trial Resumed

Mr. Talley: I ask your Honor to direct the District Attorney to read the entire panel now gathered in the courtroom, the names and addresses of each individual talesman as they are called. It is a rather long list. It seems to me that the District Attorney, if he reads those names now of the entire panel, then when the gentlemen are called to ask them if they know any of the persons whose names have been read. It would save five or ten minutes of the examination of each talesman.

The Court: I would ask that all counsel try to cooperate, realizing, of course, the Court is not putting on pressure, but to try to cooperate in getting more speed. I think we can make much better progress. I will have to take your request into consideration. The Court cannot enter into a debate on the subject.

Mr. Talley: I have no desire to debate this or any other subject now.

The Court: I am glad you made the suggestion. We will take three more talesmen in the jury box.

The Clerk then called Charles W. Staite, No. 2773; Samuel Barruch, No. 2795; James F. Nagle, No. 2810.)

The Court: Now all the other talesmen may go until [fol. 964] tomorrow morning at ten o'clock.

Mr. Barshay: I take it your Honor has not made up his mind with respect to Juror No. 2 this morning?

Mr. Turkus: I think that may just as well be disposed of now. May I suggest that counsel attend before the bench so the discussion may not be heard?

The Court: It is not necessary to go into details with the discussion, because all counsel know what is in mind. There is an element of implied bias which I think should be considered. You know what it is in connection with.

Mr. Barshay: I believe your Honor is mistaken if you say it has anything to do with implied bias.

The Court: I say you should consider it. Do not argue. When I make a suggestion I do not intend to enter into a debate with counsel, and I do not propose to have counsel come up before the bench so that press representatives will guess as to what is going on. It will be properly considered and decided without in any way prejudicing the present panel. All of us know how to avoid that.

Mr. Barshay: It is up to the District Attorney.

The Court: It is up to counsel on both sides.

MAX L. POLLOCK, No. 2807, residing at No. 60 East 19th Street, Brooklyn, examined as to his qualifications.

[fol. 965]

By the Court:

Q. Mr. Pollock, one of your neighbors was previously examined.

A. I don't know, I live in a large apartment. Where does he live?

Q. He lives between Albemarle and Beverly Road.

A. I don't know anybody in the neighborhood who has been examined.

By Mr. Turkus:

Q. The trestle board lists your profession as that of being retired. When you were actively engaged in business, what was the nature of it?

A. I was a manufacturer of blouses, ladies blouses.

Q. Were you the proprietor?

A. I was one of the owners.

Q. Where was your place of business maintained?

A. 1412 Broadway.

Q. Near what cross street?

A. Broadway and 39th Street.

Q. Is that in the clothing district?

A. No, sir.

Q. The garment district, isn't it?

A. That was five years ago, I withdrew from the business then.

Q. You have been out of business for five years?

A. Yes, sir.

Q. How many years were you in that business?

A. Three years in New York.

Q. Prior to that where did you conduct your business?

A. On the Pacific Coast. I was in business in Seattle, Washington, in manufacturing.

Q. In the manufacturing of blouses?

[fol. 966] A. Cloaks and suits there. That was a long-time ago.

Q. In the three years you have been in this garment district did you make contact or connection in the garment district?

A. No, sir.

Q. With various individuals or firms?

A. No, sir. My partner had charge of the manufacturing end of the business; I had nothing to do with it.

Q. What, specifically, did you attend to?

A. I was the manager of sales, in charge of the business end of the business, the credit end, all over the United States.

Q. Now, for the past five years you have been out of business completely?

A. I travel mainly; I have been out of business entirely, yes, sir.

Q. You have not engaged in any occupation since that time?

A. No, sir.

Q. Did your business bring you in contact with manufacturers of clothing and men's garments or ladies' garments when you were there?

A. No, sir.

Q. Did you have any contact with any unions when you were in business?

A. No, sir, I did not.

Q. Did your firm?

A. Oh, yes, my partner had all of that.

Q. Would that be with the truckers?

A. No, sir, just unions in the trade; we had a union factory, a union shop.

Q. And the contract your partner had was with unions in the ladies' garment industry?

[fol. 967] A. Just what was in our own business; we were not running any other kind of business; we had a union shop and he took care of it.

Q. The delivery of merchandise, of clothing, did that go through truckers?

A. No, sir; we had everything shipped by express.

Q. How many years have you lived in Brooklyn?

A. Nearly ten years.

Q. In the ten years you have been living in Brooklyn have you lived in the Flatbush section all of that time?

A. Yes, sir.

Q. Did you have any contact, directly or indirectly, with any person or firm in the Brownsville or East New York area?

A. No, sir.

Q. Did you have any contact in connection with the Brooklyn waterfront—did you have any contact there, directly or indirectly, with any persons or firms, on the Brooklyn waterfront?

A. No, sir.

Q. Taking it as a broad, general proposition, may we proceed with the thought that you had no contact directly or indirectly with anyone employed in the clothing or garment district of Manhattan?

A. No, sir.

Q. Did you know or come in contact with any officials of the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Is there any significance to the name of Murray Weinstein or Samuel Katz?

A. No, sir.

Q. Did you ever hear the name of Bruno Belia, an organizer, before you heard that name in court today?

A. No, sir.

Q. Or with Salvatore Marazzano?

A. No, sir.

Q. Do you know any official or any representative of the Clothing Drivers & Helpers Union, Local No. 240?

A. No, sir.

Q. Is there any familiarity in the name of Philip Orlowsky?

A. No, sir.

Q. Do you know anyone in the Teamsters Union?

A. No, sir.

Q. Have you any familiarity at all with the name of Max Silverman or Wolfie Goldis?

A. No, sir.

Q. Do you know any person residing in Sea Gate?

A. I do not.

Q. Is there any familiarity about the name of William or Willie Alberts, a bondsman?

A. No, sir.

Q. Is the name of Emanuel Buchalter or Philip Kowas familiar to you?

A. No, sir.

Q. Are the names of Bellanca and Tosca at all familiar to you?

A. No, sir.

Q. Did you know Terry Burns or Abe Slabo?

A. No, sir.

Q. Are those names familiar to you?

A. No, sir.

Q. Did you in your contact in the clothing district or in the garment district come in contact with any representative of any unions by way of business?

A. No, sir.

Q. Did you talk with people about matters that were going on in the garment district?

A. No, sir, because I was in charge of a different part of the business entirely.

[fol. 969] Q. You were in that district at the time there was an investigation being conducted by Thomas E. Dewey?

A. I think I was out of business then. That was five years ago, and I went on a trip around the world; I do not remember if it was in that time.

Q. The latter part of 1935 was when the Dewey investigation started.

A. I don't remember a thing about it.

Q. Did you participate in any discussions with people in the district?

A. No, sir, none whatever.

Q. Since your name appeared on this special panel, did anybody speak to you about the case?

A. No, sir, not except my wife; I told her I was called, and she knew about it.

Q. I take it that was in connection with the possibility of service on the jury.

A. As a matter of fact, I was away when this trial started; I was in Seattle, Washington; when I received the notice I was away from the borough until August.

Q. Were you away on business?

A. No, sir, on a tour around the United States and Alaska; I went off on a trip.

Q. Are you in sympathy with the enforcement of the Penal Law of the State of New York?

A. I am.

Q. Have you heretofore served on a jury in any type of case?

A. Civil cases, yes, sir.

Q. Has that been in Brooklyn?

A. Yes, sir.

Q. Recently?

A. No, sir; last year and the year before.

Q. Did you stay in Brooklyn?

A. Yes, sir.

[fol. 970] By the Court:

Q. Where did you live before?

A. The same place, 19th Street; then before that at 700 Ocean Avenue.

By Mr. Turkus:

Q. Were you a resident of Seattle, Washington, before you came to Brooklyn?

A. I lived in Los Angeles for a year and a half, and I lived on the Pacific Coast. I traveled that part of the country. When I came back in 1931 I did not leave except to go out on a trip, I made several trips.

Q. Is there any significance in your mind, referring now to Seattle, with the name Frank — or in connection with Los Angeles, with the name of Ben Siegel, sometimes called Ben (Bugs) Siegel?

A. I don't know the names.

Q. Or is there any significance in the name of Whitey Krakower (?)?

A. No, sir.

Q. Or Greenberg, sometimes called Greenie?

A. No, sir.

By the Court:

Q. Before you lived at 700 Ocean Avenue, where did you live?

A. I was in Los Angeles and then I came back. 700 Ocean Avenue was my home, and then I was with my brother-in-law for two or three months.

Q. Whereabouts?

A. He lived on—I don't remember the street.

Q. In what section?

A. I know the McCooley residence was in the back.

[fol. 971] Q. That was on St. Marks Avenue?

A. Yes, sir.

Q. When did you move in 700 Ocean Avenue?

A. I only moved in 700 Ocean Avenue about eight or nine years.

By Mr. Turkus:

Q. In reference to the Pacific Coast, is the name Murray Langson or Dutch Goldberg of any significance to you?

A. No, sir.

Q. In any of your experience in the garment district does the name of Curley Holtz mean anything to you?

A. No, sir.

Q. Is there any significance to the name of Lepke or Gurrah?

A. No, sir.

Q. You never heard those names in the clothing district?

A. No, sir, not in the clothing district.

Q. Or in the garment district?

A. No, sir.

Q. Have you any relatives, close relatives, who are engaged in the clothing or garment district, in business?

A. No, sir.

Q. When you were on the Pacific Coast were you in the same line of business?

A. Yes, sir, cloaks and suits.

Q. Did you maintain Eastern contacts when you were there?

A. Only buying merchandise, and I used to come in New York about once or twice a year.

Q. Was it solely for the purpose of buying materials and buying products?

A. Buying materials, trimmings, and once in a while samples, as is customary for manufacturers out West.

Q. Did you manufacture out West?

[fol. 972] A. I manufactured out West, yes, sir.

Q. Did you at any time on the East Coast go into the clothing business, the manufacture of clothing?

A. No, sir.

Q. You say in that district the name of Lepke and Gurrah were unfamiliar to you?

A. Yes, sir.

Q. And the names of Curlie Holtz and Weinstein?

A. I don't know any of them.

Q. I read off 'a list of nine lawyers who represent the defendants in this case. Are the names familiar to you by now?

A. No, sir, I do not know any except what I heard in the courtroom.

Q. So you know none of the nine lawyers who represent the defendants?

A. I do not.

Q. Do you know the former District Attorney of the county, Mr. Geoghan, or any member of his staff?

A. No, sir.

Q. Do you know the present District Attorney of the county, Judge O'Dwyer, or any member of his staff?

A. I do not.

Q. Do you know anyone who is employed in the office of counsel for the defense?

A. I do not.

Q. Do you know any member of the bar who has specialized in the trial of criminal cases?

A. No, sir.

Q. Do you know the name of William W. Kleinman as a lawyer, or David Price, as a lawyer? Are those names familiar?

A. No, sir.

Q. Or Saul Price?

A. No, sir.

[fol. 973] Q. In the civil case you participated in as a juror, did that case come to a conclusion? I mean, did the jury have the benefit of the instructions on the law from the Judge?

A. It did.

Q. At the outset, I take it you understand the charge is murder in the first degree?

A. I found that out in court.

Q. Is there anything about the nature of the charge which would prohibit you from being a fair and impartial juror?

A. Nothing.

Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Would you consider the question of punishment in deliberation on guilt or innocence?

Mr. Cuff: I object to the form of the question.

The Court: Sustained, because he does not know the law.

By the Court:

Q. If the Court should charge you not to consider the question of punishment, would you follow that?

A. I would.

By Mr. Turkus:

Q. After receiving such instructions, would you permit any other juror in the jury room then to discuss the question of punishment?

A. I would not.

By the Court:

Q. In the section where you live there are various civic organizations. Do you belong to any of them?

A. You mean like men's clubs?

[fol. 974] Q. Yes.

A. I belong to two of them, the Sharris Torah, on Bedford Avenue near Ralph.

Q. Has this matter been discussed at any of your meetings:

A. No, sir.

Q. Or the O'Dwyer activity in connection with these matters?

A. No, sir, nothing whatever.

Q. In speakers' addresses, in the meetings you attended, was there any discussion in regard to this or any case like it?

A. No, sir.

Q. Who is the president of the Bedford Avenue Mens Club?

A. Dr. Canoff.

Q. There is a rather short-statured lawyer who used to be the president?

A. Yes, sir.

Q. What was his name?

A. Novick, I think.

Q. Have you discussed these matters with any of them?

A. No, sir, with nobody. 7

By Mr. Turkus:

Q. Will you, if selected as a juror in the case, take the law implicitly and without qualification from the trial justice?

A. I will.

Q. Is there any reason why you cannot apply to the benefit of the defendants every constitutional right and every law in their behalf the Court will instruct you they shall have?

A. No, sir.

Q. Will you give them the presumption of innocence [fol. 975] according to the instructions on the law from the Judge?

A. I will.

Q. Will you endeavor, conscientiously, to apply to their benefit, the law of reasonable doubt?

A. I will.

Q. Will you give them everything under the law they are entitled to?

A. Yes, sir.

Q. Something has been said by one of the lawyers for the defendant Buchalter that his client has heretofore been convicted of a crime and sentenced to a long term in jail, and whether or not that fact would prejudice any jurymen's mind against him. Do you feel any prejudice against him for that reason?

A. I do not.

Q. By the same taken, would you relax or deviate from your duty as a juror in this case because he has been heretofore convicted of a crime and is presently serving a jail sentence?

A. No, sir.

Q. Do you find any fault with a prosecution which uses testimony of accomplices or coparticipants in a crime against the remaining defendants?

A. No, sir.

Q. Do you have any inherent bias or prejudice against accomplice testimony, that is, one of the participants in the crime, which would cause you to reject testimony under all circumstances?

A. Not under all circumstances, no, sir.

Q. Would you reject the testimony unless every detail of it was corroborated?

Mr. Barshay: I object.

[fol. 976] Mr. Turkus: Question withdrawn.

Q. There was, to my mind, at least, something in connection with your saying, "not under all the circumstances." Did you have some mental reservation?

A. No, sir, none whatever.

Q. Is your state of mind such you feel that even a bad man, a man with a past criminal record, who is steeped in crime, and has been associating with killers, do you feel that that person can sometimes tell the truth?

A. He may tell the truth sometimes.

Q. Will you look at his testimony carefully—would you look at the testimony of such a person with care?

A. I would, very carefully.

Q. Will you look at that testimony not only with care, but with caution?

A. I will.

Q. Look at the source from whence it comes?

A. Yes, sir.

Q. And all of the circumstances in connection with it?

A. Yes, sir.

Q. Let me go along with you at this point in this manner: Do you find any fault against the prosecutor for the use of that kind of testimony?

A. Repeat that.

Q. Do you find any fault with the prosecutor for using accomplice testimony in a court-room?

A. I do not.

Q. Do you find any fault with a prosecution which breaks a case from the inside and gets one of the participants in a crime to testify against the others?

[fol. 977] Mr. Cuff: I object to that as having been already answered twice.

The Court: Objection overruled.

Mr. Cuff: Exception.

A. I do not.

Q. If instructed by the Court that there can be no conviction only upon the testimony of an accomplice, if that happens to be the situation, will you follow that instruction of law?

A. Yes, sir.

Q. Will you follow it without finding any fault with it?

A. I would.

Q. So that as you sit there now is your state of mind such that no matter how you may believe an accomplice, if that is all there is to the case you can not convict?

A. I could not.

Q. On the other hand, if there is additional testimony coming from an independent source, that is, a source other than from the accomplice, which to your mind satisfies you and tends to connect the defendants with the commission of the crime, and you are charged that, as a juryman, you may, if you desire, find that to be corroboration, will you find any fault in following the instructions on the law?

A. I would not.

Q. Would you, if instructed that that was sufficient, require the District Attorney to prove more than that?

A. Repeat that, please.

Q. If you were informed by the Judge that the additional [fol. 978] information or additional testimony is sufficient, would you, because there is testimony of the accomplice in the case, require the District Attorney to furnish more evidence that the law requires?

Mr. Cuff: I object to the form of the question.

The Court: Objection overruled.

Mr. Cuff: Exception.

A. No, sir.

The Court: Of course, he would have a right to require enough evidence to satisfy him as to credibility; the corroborative evidence would have to be believed and accepted by him

Q. What I am trying to find out is whether or not there exists in your mind any prejudice against testimony of an accomplice which would give you a state of mind that would require more evidence from the District Attorney than you would in any other type of case, simply because of accomplice testimony?

A. No, sir.

Q. In other words, will you endeavor, conscientiously, to apply the principles of law that the Court gives you to the facts in this case?

A. Yes, sir.

Q. There are various tests, as one of the lawyers pointed out, that people apply in their business, in their everyday business affairs, in weighing the credibility of people. Do you remember that statement being advanced to prospective [fol. 979] five jurors?

A. I remember. I think I was seated there.

Q. I take it you understand your state of mind. In a criminal case frequently there are characters who come into the court-room that people do not meet in their everyday business experience.

A. I understand.

Q. And that in weighing the facts in this case you have got to understand it is a murder case.

A. Yes, sir.

Q. And you are going to deal with individuals whom you have never seen before.

A. I understand that.

Q. In other words, will you use common sense and understanding in weighing the issue in the case?

A. I will.

Q. There may or may not be a defense of alibi interposed by one or more defendants. If there is such a defense interposed, will you take the law exclusively from the Judge?

A. I will.

Q. With respect to the degree of proof necessary and all instructions of law, will you take the instructions given by the Judge explicitly and without any discussion as to anything that anyone else thinks is the law?

A. I will.

Q. Will you endeavor, conscientiously, to apply that law to the facts in this case?

A. I will.

Q. Is there anything up to this point that I have not questioned you about which would go to your qualification to sit as a fair and impartial juror?

A. Nothing whatever.

Q. For example, is there anything you may have read [fol. 980] in the press, because you were once in the garment district, that lingers in your mind with respect to any defendant in the case?

A. I never read anything about it while in the district.

Q. When did you leave the district?

A. In 1936, the latter part of 1936.

Q. By that time did you read anything about the investigation of Mr. Dewey in the clothing district?

A. No, sir, I did not bother about reading anything about that at all.

Q. Did you participate in any discussions with people there in the district where you were employed?

A. No, sir, I was too busy a man, too busy with business.

Q. Do you know whether or not there was considerable discussion you may have heard about that Dewey investigation in that district?

Mr. Cuff: I object; the witness says he had no discussion. I ask that he not repeat the question.

The Court: Objection overruled.

Mr. Cuff: Exception.

A. I did not.

Q. While you were in that district did you ever come across the name of Peter Monat?

A. No, sir.

Q. While in the clothing district or in the garment district did you ever hear the name of Danny Fields?

A. No, sir.

Q. Or that of Charles Shapiro, sometimes known as Gurrah? Did you hear the name of Charlie Shapiro?

A. No, sir, I never heard that name there.

[fol. 981] Q. So, as you are sitting in this box now you have read nothing at all about the case and heard no discussion whatsoever?

A. About this case, nothing.

Q. And as far as you are concerned, as you are sitting there, the names of the defendants mean nothing to you other than the fact you have heard them in this court?

A. Nothing whatever.

Q. You have seen nothing of it in the press and heard no discussion?

A. I was away the time this came up.

Q. If selected as a juror, will you listen to fair argument of other jurors?

A. Yes, sir.

Q. I do not mean you have to subordinate yourself and be a rubber stamp.

A. I would not do that at all.

Q. You will look the thing over in your mind and with your own eyes and ears listen to the testimony?

A. Yes, sir.

Q. Will you discuss the case without rancor and without bitterness and with common sense and understanding with the other jurors?

A. I will.

Q. Will you endeavor to do justice in the case with your verdict?

A. Yes, sir.

Q. And is your state of mind such that you will give the People of the State and the defendants a fair trial?

A. It is.

Q. And if you should hear the same argument repeated over three times by nine lawyers, when they get up and [fol 982] talk to the jury, that argument would not be made stronger because you heard it three times?

A. No, sir.

Mr. Barshay: I object to it, assuming a state of facts not present.

By the Court:

Q. Would the fact there are a lot of lawyers on one side and only one on the other make any difference to you?

A. It would not.

By Mr. Turkus:

Q. You have no bias or prejudice one way or the other?

A. I have not.

Q. As you sit in the jury box you feel you can give to the defendants everything that the law of the land says they should have?

A. Yes, sir.

Q. By the same token, do you feel you could discharge your duties to the People of the State of New York as a fair, honest, conscientious juror?

A. I do.

Q. Is there anything in your background or history or past business connection which would in any wise interfere with a verdict on the evidence in this case?

A. Nothing.

Q. If The People of the State of New York establish to your satisfaction beyond a reasonable doubt that Buchalter, Weiss, and Capone are three of the men who killed Joseph Rosen in his candy store September 13, 1936, on a Sunday morning, would you hesitate to say so?

A. I would not.

[fol. 983] Q. You would have no fear or reluctance in saying so?

A. No, sir.

By Mr. Barshay:

Q. You appreciate that every defendant is entitled to a lawyer?

A. Yes, sir.

Q. And, there being three defendants, the three defendants are entitled to respective counsel?

A. Yes, sir.

Q. So if one counsel sums up for Buchalter and another counsel sums up for Mr. Capone and another for Mr. Weiss, if, because of the narrowness of the issue, some of us may have to repeat the arguments or such arguments which they feel are beneficial to their client, you would not call them repetitions and hold them against our client?

A. Not if they had reference to that particular client.

Q. We may have a determination of the same view on the same subject. You will not charge that to our client, because we have other counsel representing the defendants?

A. No, sir.

Q. So because of the fact there are nine lawyers for three defendants and one lawyer for the prosecution, that has nothing to do with the case?

A. No, sir.

Q. As a matter of fact, the prosecution has a full staff, from Judge O'Dwyer all the way down, every employee co-

operating, and two lawyers in the prosecution of this case. That has nothing to do with this case?

A. No, sir.

Q. You won't consider that?

A. No, sir.

[fol. 984] Q. In other words, numbers and atmosphere have nothing to do with it?

A. No, sir.

Q. You have but one charge to try here?

A. Yes, sir.

Q. All those names that have been read to you, if they had nothing to do with the case, if the testimony in this issue does not involve them, you will dissipate them from your mind?

A. I will.

Q. Sitting here, is there any prejudice or bias enjoined against any defendant?

A. None whatever.

Q. As you sat here as a prospective juror for several days, did you form any opinion with respect to this case?

A. I did not.

Q. So I take your word for it that your knowledge of people involved in the case means absolutely nothing other than what you heard here?

A. That is right.

Q. You know none of the defendants?

A. I do not.

Q. You are free of bias and prejudice?

A. Yes, sir.

Q. You are ready to do your job in accordance with your oath?

A. Yes, sir.

Q. If the Court shall tell you that the character of the defendant has nothing to do with this case whatever, unless the defendant makes it an issue in this case, you will follow that instruction of the Court?

A. I will.

Q. You being a credit man, you have a lot of experience with people who seek credit?

A. Yes, sir.

[fol. 985] Q. The situation is parallel here, sir. People will take the stand who seek your credit and belief as to whether or not they are telling the truth in this case. You

know what judgment you use in giving credit to persons in your business.

A. Yes, sir.

Q. If a bankrupt pleads for credit—

A. I have very few of those.

Q. If he was a bankrupt more than once you would have a little bit more hesitation before you opened your pocket?

A. Yes, sir.

Q. There will be people here who will take the stand who all their lives will admit they are moral bankrupts and have been moral bankrupts all their lives, and so before you accept their testimony you will use your judgment the same as you use it in your business?

A. I shall.

Q. As you heard it said before, time and again, it bears repetition briefly: the worse a man's record is, if he takes the stand the less credit you will give him?

A. I would have to be more cautious.

Q. For example, a murderer or robber or a pimp or a thief or a perjurer, when he asks you to believe him, you are going to think twice before you do believe him?

A. I will.

Q. If a man takes the stand and says, "I have not been only a perjurer, but I have been a draft dodger, a dodger from duty to my country in the last war," you will have to find out whether that man is worthy of belief?

A. I would be cautious.

[fol. 986] Q. You would also look for the motive of their testimony—Why are they giving this testimony? What do they hope to gain?

A. I would.

Q. What is it that induces them to do that? The hope of gain, the hope to escape punishment, the hope to escape—you will look into that?

A. I will.

Q. And the fact that these thieves, burglars, and murderers have been living all this time at the taxpayers' expense, has that motivated them to give a certain type of testimony? You will look into that?

A. I would look into that.

Q. Keeping in your mind all the time that each defendant is presumed as innocent of this charge as any person in the world?

A. Yes, sir.

Q. And that they have not a single burden to sustain in this case, that the burden always is with the District Attorney?

A. I heard that stated here.

Q. And you believed it?

A. Yes, sir.

Q. Will you apply it?

A. I will.

Q. You will see to it, reasonably, that every juror complies with it?

A. Yes, sir.

Q. And if character testimony is no better and is less worthy of belief than even the testimony of so-called accomplices, you will weigh that with a great deal of care and caution?

A. I will be very careful.

Q. In other words, you will let nobody pull wool over your [fol. 987] eyes?

A. I do not think they can.

Q. So, giving whatever is due to the District Attorney, giving whatever is due to the prosecution, will you have the courage to render a verdict here that reflects the positive truth in this case, without fear or favor to either side?

A. I will.

By Mr. Cuff:

Q. If under instructions of counsel the defendant or either one of them should not take the witness stand, and the Court should instruct you that no unfavorable inference shall be drawn from that fact, will you follow that instruction?

A. I will.

Q. You will not be prejudiced against any defendant who does not take the stand?

A. No, sir.

Q. You promise that?

A. Yes, sir.

Q. Well, now, assuming you hear the argument of counsel and the charge of the Court on the law and you go to the juryroom to deliberate, will you go over all the evidence carefully, consider it carefully, weigh it, and his Honor will instruct you to apply the law to it, if, after that, you find there is in your mind a reasonable doubt, that you would

give to the defendant or either one of them, and that reasonable doubt has been reached after listening to all of the arguments of the other jurors, based upon the evidence in the case or lack of evidence, will you have the courage to vote "Not Guilty" in accordance with the instructions of the Court?

A. I will.

[fol. 988] Q. Will you have the courage to adhere to your conscientious view, despite the fact there may be several of the jurors against you, or the majority of them against you?

A. I will.

Q. You realize, I assume from your answers, that it is your solemn obligation to vote according to your own conscience after a careful view of the evidence and the discussion I have referred to?

A. Yes, sir.

Q. And you will do so?

A. I will.

Q. Without fear or favor?

A. I will.

Q. And if you reach a conclusion, as I said, that there is a reasonable doubt, that the prosecution has not sustained the burden of establishing the guilt of the defendants or any of them beyond a reasonable doubt, you will have the courage to come in with a verdict of Not Guilty?

A. In that case I would.

By Mr. Rosenthal:

Q. Have you read anything in the newspapers at all about this case?

A. About this case I did not.

Q. Have you read anything at all in the newspapers about any of the defendants that has in any wise left any impression?

A. None whatever.

Q. What papers do you read?

A. The *Times* and the *Post*.

Q. You realize, irrespective of the fact that what you may or may not have read—, that the defendants are charged in this Court by an indictment with a specific crime?

A. Yes, sir.

Q. And it is your duty, if accepted as a jurymen, to dis-
[fol. 989] miss all outside influences and direct your atten-

tion solely to what the witnesses may say on the stand as to the evidence in this case?

A. Yes, sir.

Q. You further realize that the defendants are being tried for one crime, the crime of having participated in an alleged murder of one Joseph Rosen?

A. Yes, sir.

Q. And that The People, represented by the District Attorney, must offer proof to your satisfaction, beyond a reasonable doubt, establishing that that crime was participated in—the Court will charge you the law to be—by all or any one of these defendants before you can convict?

A. Yes, sir, that is clear.

Q. The District Attorney has indicated it is his intention to use what he calls an accomplice or accomplices in part to substantiate the charge against these defendants.

A. Yes, sir, I take it that is the purpose.

Q. Of course you are going to take the law solely from the Court; that is your duty?

A. I understand.

Q. You are going to take the facts solely from the sworn witnesses on the witness stand?

A. Yes, sir.

Q. The reasoning of the law is, either in summation—that applies both to the District Attorney as well as to the defense—is only acceptable by you if you believe in their reasoning; if it coincides with your opinion?

A. That is correct.

Q. And to be discarded in the event you do not agree with [fol. 990] them?

A. Yes, sir.

Q. You rightfully said that if an accomplice takes the stand you will view his testimony with caution?

A. Yes, sir.

Q. Of course, the Judge will charge you as the law that you must view it with extreme care and caution; that is the law of our land.

A. Yes, sir.

Q. Now, if the Court charges you that, even if you were to come to a conclusion, rightfully or wrongfully, that the accomplice is telling the truth; that even then you could not convict any man under our law unless and until you were able to find from the evidence, other independent evidence, coming from the mouths of other than accomplices,

tending to connect the particular defendant with the crime—Is that clear?

A. Yes, sir.

Q. You may have heard my statement to the other men in the box to the effect that there are two types in law of accomplices, one where the Court will direct you that you must absolutely determine that he is an accomplice, that is, an accomplice as a matter of law—

A. Yes, sir.

Q. Then again the Court may say to you, "I don't charge you as a matter of law that so and so is an accomplice, but you as a jurymen, from all the facts and all his statements on the stand, may find he is an accomplice."

A. I heard that mentioned before.

Q. Is it clear to you?

A. Yes, sir.

Q. Merely because of the fact that the District Attorney [fol. 991] or the Court may not agree that the particular individual is an accomplice as a matter of law, if it is left to your discretion, that will not preclude you from finding him an accomplice?

A. I will use my best judgment.

Q. So if you were to determine, if it was left to you, that the particular individual, from the testimony, appears to you to be an accomplice, you will make a determination known to your fellow jurors in the jury room?

A. I would.

Q. You understand that if the District Attorney were to call fifty accomplices, that, as far as weight, is no more than one—in other words, one accomplice cannot corroborate another accomplice?

A. I know that.

Q. The evidence which you must find in order to determine the guilt of the defendant or defendants must flow from an untainted source, be independent evidence?

A. Yes, sir.

Q. Now then, assuming that the District Attorney were to contend that what he relies upon as independent evidence is an alleged statement coming from the mouth of one of the witnesses, and allegedly having been made by one of the defendants, admitting his participation in the crime—

A. I wish you would repeat that.

Q. Assuming that the District Attorney were to say to you: It is my contention that this independent evidence which we are required to give to you consists of an alleged statement made by one of the defendants to the witness [fol. 992] who is on the stand; one of the witnesses for The People, who gets on the stand and says, one of these defendants said to him that on the night of so and so at such and such a place he did participate in the crime, and the District Attorney says, "We rely on that as being the independent evidence to connect this particular defendant," now, if that should be the case and if it further develops that that particular individual who makes that statement—whether on examination by the District Attorney or whether he is forced to admit it on cross-examination by the defense attorneys—finally turns out to be a man who has admittedly murdered a number of people, committed perjury in a court similar to this one, and committed various acts, before you would take his testimony to be true you would judge carefully what motive he might have behind him in making these alleged statements?

A. I naturally would.

Q. In other words, you would say to yourself, "Is this man going to be prosecuted for the murders he admitted?" "Does this man expect any favors of any character? Has he received any favors of any character, and is he trying to defeat the law in so far as it concerns him, and prevent, by telling the District Attorney these things, their prosecuting him for what he should be prosecuted for?"

A. I would give it some thought, yes, sir.

Q. If the Court were to charge you, not only should you give it some thought, but you should weigh with extreme [fol. 993] caution the testimony of any interested witness—you would give it a great deal of thought, wouldn't you?

A. Yes, sir.

Q. The District Attorney further stated to you about the fact that one or more of the defendants may offer a defense of alibi. I asked you whether you would take the law from the Court and you said you would.

A. Yes, sir.

Q. From your being seated in the court-room for a number of days, hearing questions repeated on numerous occasions, are you now acquainted with the fact that it is not incumbent upon any defendant to prove anything in a criminal case?

A. I found that out in the court-room.

Q. And if the Court were to give you that instruction, that not only need the defendant not give any evidence, he need not go on the stand himself, he need offer no proof whatever, still you would be precluded in the jury room from using that fact against him, you would follow that instruction?

A. Yes, sir.

Q. Now then, it may be that the defendant may, of his own volition, desire to take the stand and offer evidence. If the Judge tells you that, even if that is the case, that that does not shift the burden at all, you would follow that?

A. Yes, sir.

Q. Now, so as to make clear my statement, I mean this: that no matter what the defendant may say or his witnesses, the burden of proof, the burden of proving the guilt of the defendant, never shifts from the District Attorney; it stays on that side of the table all the time.

A. I understand that.

[fol. 994] Q. It is not necessary for the Court to charge you—it is not necessary, even though an alibi is offered, for you to believe the alibi, that is not necessary at all—if that alibi evidence has sufficient weight in your mind to create a doubt as to whether the defendants participated in the crime, that doubt, like any other doubt, is sufficient for you to say, “I am in doubt and I must acquit.” Is that clear?

A. That is clear.

Q. So that merely because an alibi is offered on behalf of any defendant, as stated by the District Attorney, that is not going to make you change the burden of proof to the defendant?

A. No, sir.

Q. Or if, on the offer of that alibi, you become in doubt as to whether, in view of that alibi, this defendant has participated in the crime, you would not hesitate to resolve that doubt in favor of the defendant and acquit him?

A. I would not.

Q. The fact that there are a number of lawyers—each one of these defendants, you understand, is entitled to a separate trial at your hands?

A. I heard that.

Q. In other words, you are really sitting as a jurymen in three cases?

A. Yes, sir.

Q. Each set of lawyers has his own responsibility; mine, with my associate, is for the defense of the defendant Capone, and Capone alone.

A. Yes, sir.

Q. So that the mere fact that three different lawyers get [fol. 995] up and tell you their views, whether they coincide or do not, you understand each one of them is merely speaking on behalf of the particular person whom he represents?

A. I understand.

Q. You would not hesitate, if you found you were unable to reach a conclusion as to one or two of the defendants, as to their guilt, to say, "I acquit every defendant that I am in doubt about"?

A. No, sir.

Q. No more than you would hesitate because of what you have seen in the court-room as to a set of men or a number of men who have a right to their opinion, or because of the publicity that may be attendant to this case, to come in, without any fear at all, if you were not convinced of the guilt of these defendants you would not hesitate to make that known in your verdict?

A. No, sir, not if I am convinced of it.

Q. You say "no, not if you are convinced." The fact is, you must be convinced of their guilt; is that clear?

A. I could not, if I am convinced.

Q. Merely because of the fact you have not served on a criminal jury before and some of the other men called may have, you are not going to allow them to substitute their opinion for your opinion?

A. Oh, no.

Q. Because your opinion, when it is once formed, finds its origin from your conscience?

A. Yes, sir.

Q. And whether there are members who disagree with you or not, you heard the District Attorney speak about being arbitrary and things of that kind, you would not [fol. 996] consider you were arbitrary if, after listening for hours and reasoning with the other men and trying to convince them, not arbitrarily sitting in a corner, but arguing the propositions back and forth the same as you would business propositions, and they were not able to

convince you that your line of reasoning was wrong, you would not hesitate to hold to your line of reasoning?

A. I would not.

Q. Have you any immediate relations on the Police Force?

A. I have not.

Q. Or any attached to the present District Attorney's office?

A. No, sir.

Q. Have you heard any discussions among the Assistants who are actually attached to this case—you see there are three actually attached to this case—let me name them as long as they have named the three lawyers for the defense: Mr. Turkus, a prominent lawyer who practiced criminal law and is now an Assistant, Mr. Joseph, sitting alongside of him, and Mr. Klein, who has been here and will be here, for all purposes, throughout the actual trial—so you see there are three lawyers for the District Attorney—do you know any of them?

A. No, sir.

Q. Do you know of any reason why you could not be fair and impartial to both sides?

A. No, sir.

Mr. Rosenthal: No challenge for cause.

Q. You say you saw my client but don't know him?

A. No, sir; I just saw him the other morning; I saw the case on the calendar.

[fol. 997] Q. You mean you saw the name?

A. Yes, sir.

By Mr. Turkus:

Q. When you left New York in 1936 you left your business in the garment district, did you go to the Pacific Coast?

A. I went on a trip around the world and came back home after six months.

Q. And you say you never worked since then?

A. No, sir, never worked since then.

Mr. Turkus: Challenge peremptorily.

The Court: Before taking up a certain matter I am going to excuse the members of the panel. They will come back together at the right time.

Do not discuss the case, gentlemen.

(Talesmen in box leave the court-room.)

(After the talesmen retired, the following colloquy ensued:)

The Court: What the Court has in mind for consideration by counsel for both sides and particularly by counsel for [fol. 998] the defense is the alleged reported activity of Talesman Protter's brother, as chairman of a committee which investigated the murder of Peter Panto. It is possible the murder of Peter Panto may at some time during the course of this trial be in some way connected up or involved. I don't know. So far as the Court knows, it is a mystery, but it was, according to reports, a waterfront murder, and as one of those, on authorization—direction. Now, this brother who had charge of that investigation is very well known in the community as a Left Wing. There is a talesman of the Right Wing. The brother lives at Avenue J and East 21st Street and, on the talesman's own admission, he visits there from time to time. While he does not share the same Left Wing views as the brother, the talesman is on terms with his brother of what I judge to be the ordinary family cordiality. It further appears by examination of the talesman that while he went to live at a New York hotel during the summer, because his mother and sister had not returned from vacation, he continued his residence—I will not say residence, but he continued his sojourn at the New York hotel later because he did not want to discuss this case with his mother and sister. That is a circumstance quite unusual. I never heard of such a thing before. Putting this and that together, the [fol. 999] thought comes into the mind of the Court whether or not, regardless of the talesman's assurance that he is not biased and would not be influenced by anything that he may or may not have heard discussed at home, there is not, subconsciously, in his mind prejudice against these defendants which may not be more clearly understood or developed later on in the trial or after the trial. It would be quite unfortunate if such a condition were to come to light at a later stage, either during or after the trial. I advise counsel to consider it now.

Mr. Climenko: May I ask your Honor a question?

The Court: I will leave you alone with the thought for a minute. The Court will remain in order.

(The Judge thereupon retired to an anteroom.)

(On the return of the Judge to the bench the following colloquy ensued:)

The Court: If any conclusion has been arrived at I will hear it.

Mr. Climenko: May it please your Honor, in behalf of all of the defendants, an exception is noted to your Honor's remarks in their entirety with respect to Talesman Protter.

The Court: Is it on the record there are no talesmen here?

[fol. 1000] Mr. Climenko: The talemnen were absent during the Court's remarks, and they are absent at this time, but the defendants respectfully refer your Honor's attention to the fact that so far as the defense is concerned there was no reason for anyone to anticipate any possible relationship between the so-called Panto incident and the issue in this case.

The Court: I am not entering into a debate. You have taken your exception. I think it is utter nonsense. I am giving you an opportunity, in all fairness, to challenge for implied bias if you wish to do so.

Mr. Climenko: We do not wish to do so, and I wish on behalf of all of the defendants to state the reason prompting the taking of this exception. I have not completed that statement.

The Court: I cannot stop you, but I think it is utter nonsense.

Mr. Climenko: We think it is not nonsense and take an exception to your Honor's remarks as to that.

The Court: What is the purpose of the exception? There are no talesmen here.

Mr. Climenko: If your Honor please, your Honor has referred to a matter that is foreign to the issue in this case. It has been referred to in a manner which must have, of necessity, gotten to the representatives of at least [fol. 1001] four newspapers who are present in court, although the talesmen are not. Therefore, the defense is necessarily and properly apprehensive that possibly your Honor's remarks will of necessity come to the attention of some of the talesmen at some time in the future.

The Court: The Court got its information from the newspapers, particularly the Brooklyn *Daily Eagle* publication, following the examination of this talesman.

Mr. Climenko: By the same token, talesmen must get their information from newspapers. Before your Honor spoke there was no possibility of any talesmen knowing anything about the Panto case, and its possible connection with this case. The defense asserts there is some such connection, and for that reason takes an exception to your Honor's remarks.

The Court: It looks as if the Court has stirred up something based upon a publication in the newspaper following the examination of Mr. Protter. Hereafter the Court will be obliged to exclude newspaper men when it excludes talesmen, in order to avoid any acrimony of this kind.

Mr. Climenko: I take an exception to your Honor's last remark, which was obviously directed to counsel for the defense. There was no necessity for any such remark.

The Court: The Court will ask you to come to order. [fol. 1002] Let the talesmen be brought down.

Mr. Turkus: Before you bring in the talesmen may I say that there was a newspaper article, and the newspapers have been replete with conferences with Marcy Protter and a certain group had with the District Attorney in connection with the Peter Panto case. As a matter of fact, in a newspaper which was printed over recess there was a statement made that it was divulged by the District Attorney, Mr. O'Dwyer, in proceeding with the Panto investigation, that the defendant Weiss was implicated in the slaying of Peter Panto. That was in the press over recess. There have been many such articles. There were many articles in the press too, prior to this case, in connection with the alleged participation of the defendant Weiss in the Peter Panto killing. Now, this prospective talesman said that the reason—

The Court: (interrupting) Now, please, I must call you to order. If you have a challenge for implied bias, state it.

Mr. Turkus: I have a dual challenge. I challenge first as to his qualifications to sit as a juror because of his residence in Manhattan, which is not consistent with his voting residence or actual residence somewhere else. There is also testimony—he said he was going to live in New York [fol. 1003] because he wanted no contact with people in Brooklyn who might talk of this case, referring to members of his family, Attorney Protter being one of the members. He stated further that he contemplated going to Miami, Florida. There may be some jeopard in a verdict where

a man actually and physically resides in Manhattan. In addition, I press a second challenge of implied bias.

Mr. Talley: In view of the fact that the defendant Weiss was brought into this matter by the Assistant District Attorney two or three days ago, the defendant Weiss in connection with the Pinto case, I want to note a further exception to your Honor's reference to that case as being extremely prejudicial to the defendant Weiss. The same newspaper that printed this story last week will have ample opportunity to print the story of your Honor's reference to the Pinto case in connection with this talesman. I want it noted, in view of the fact that I am appearing for Weiss, that the exception which has already been expressed to your Honor's remarks likewise be joined in by me.

Mr. Rosenthal: In behalf of the defendant Capone, in view of this discussion which has been now engaged in, in view of the District Attorney's statement of what is alleged in the newspapers to have been divulged by Mr. O'Dwyer's office to the newspapers, and in view of your Honor's statement, I now ask for a mistrial in so far as [fol. 1004] the defendant Capone is concerned. And I renew my motion for a severance, which was heretofore made.

The Court: Denied.

Mr. Rosenthal: Exception.

Mr. Barshay: Defendant Buchalter also excepts.

The Court: Exception goes all around.

(BENJAMIN PROTTER, residing at 772 Linden Boulevard, Brooklyn, New York, after being duly sworn, was tried on the challenge.

By Mr. Turkus:

Q. Now that you have been sworn on this voir dire, would you make the same responses to the same questions that you made when you were unsworn?

A. Yes, sir.

Q. And would those responses be true?

A. Yes, sir.

Q. For example, you make the same answer as to your residence in the Manhattan hotel?

Mr. Climenko: I object to the question. There is no such testimony as residence in a Manhattan hotel.

A. I live since yesterday finally at 772 Linden Boulevard.

Q. Did you check out of the hotel?

A. Yes, sir.

Q. During the course of a prior examination I believe you said you specifically were to continue to live at the hotel because you did not desire to discuss the case with any members of your family.

A. Yes, sir. May I explain? My week's rent at the hotel [fol. 1005] was up September 18th, that was the first day I appeared in this court. I understood it was a murder case, and from the questioning of the other jurymen or prospective jurors I also understood it was best not either to talk about or be talked to, or read about the case, and that is what decided me to continue on at the hotel.

Q. As I understand your past answers, you moved to the hotel at the time when your mother was away on vacation?

A. That is right.

Q. And that you continued to reside in the New York hotel after your mother returned?

A. Yes, sir.

Q. And that the reason for your continued residence in the Manhattan hotel was to avoid any discussion with members of your family?

A. Yes, sir.

Q. In regard to this case?

A. That is right.

Q. One of the members of your family is Marcy Protter, a lawyer?

A. Yes, sir.

Q. A lawyer who represents some Brooklyn waterfront interests?

A. I don't know.

Q. Don't you know that?

A. No, sir.

Q. You have been friendly with your brother?

A. Distantly so.

Q. I understand your prior statement to mean that you have some political differences?

A. Yes, sir.

Q. Isn't there the usual cordiality of one brother to another, nevertheless?

A. I don't think so.

[fol. 1006] Q. Have you been out of contact with him completely?

A. I can say this much: that in seventeen years I have been away I received about three letters from my brother. Since coming back I was down to his house twice; neither time on any particular invitation, but taken there by one of my sisters. In 1939 when I was here I was invited once to his house for dinner.

Q. Specifically which members of the family did you wish to avoid discussing this case with?

A. I mean any member of my family. They are very curious, and of course they would ply me with questions and perhaps give me information I did not desire to hear.

Q. There were certain members of your family that had information in regard to the Peter Panto case?

A. I don't know.

Mr. Barshay: I object to that

The Court: Objection overruled.

Mr. Barshay: Exception.

The Witness: I don't know what the case was about.

Q. You say you wanted to avoid some member of the family?

A. Not some particular member, no.

Q. Do you mean that you just continued to reside in New York and that you had no intention of coming back while this case was in progress?

A. I had no intention, no, sir, but because of the objection which you brought out the other day I thought it preferable to come back.

[fol. 1007] Q. As I understand it, your original intention was not to discuss the case with any member of your family and not to receive any information from them?

A. That is right.

Q. There are some members of your family who have information as regards this or any other investigation, which you did not want to hear?

A. I don't know; I could not answer that question.

Q. If you did not know they had any information about this—

A. I mean newspaper information, that is all.

Mr. Cuff: I object to the question as argumentative and already covered.

The Court: There is an element of danger in pursuing these questions too far.

Q. Then I will qualify that these were the statements made by you heretofore when you were not under oath, and if they are true responses to the questions.

A. Yes, sir.

Q. If you were asked again would you make like answers?

Mr. Rosenthal: Objected to as already answered.

The Court: Objection sustained.

Q. Are those answers true?

Mr. Rosenthal: Objected to as already answered.

The Court: Objection sustained.

By Mr. Barshay:

Q. You are absolutely free of any bias or prejudice against either defendants?

[fol. 1008] A. I am absolutely free of any bias or any prejudice of any kind.

Q. Since your coming here nobody has spoken to you about this case?

A. No, sir.

Q. Now, at this minute, under oath, you will render a fair, impartial verdict?

A. Yes, sir.

Q. Based upon the evidence in the case?

A. Completely.

Q. Free of prejudice, free of bias, free of discussion with any member of your family or anyone except the jurors who will be sworn with you, if you are chosen?

A. That is so.

The Court: Anybody else wish to question?

Mr. Barshay: No.

The Court: So far as the residence is concerned, that challenge is overruled. So far as the other one is concerned, the Court believes that the sitting of this talesman on the jury will create a problem of implied bias which will remain throughout the trial and may affect the result.

Mr. Barshay: I respectfully except to your Honor's ruling on behalf of the defendants.

SIGMUND KRANER, No. 2613, residing at 815 Eighth Avenue, Brooklyn, New York, examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Is that on the Park Slope?

A. Yes, sir.

[fol. 1009] Q. Near 9th Street?

A. Right near the corner.

Q. How long have you lived in the Park Slope district of Brooklyn?

A. Five years.

Q. Prior to that where did you live?

A. In Williamsburg, on Greene Avenue.

Q. In the Williamsburg section?

A. Yes, sir.

Q. How many years did you live there?

A. Twelve.

Q. Is that the limit of your residence in Brooklyn?

A. No, sir, thirty-five years.

Q. Before that did you live in another section?

A. I come from Massachusetts.

By the Court:

Q. 815 is near where?

A. Near the corner of 9th Street, a house formerly owned by Mrs. Cannavan, who died recently.

Q. That is right up from the 12th Assembly District Club, on the same side of the street?

A. About a block.

By Mr. Turkus:

Q. According to the trestle board you are listed as a merchant.

A. Yes, sir.

Q. Any other explanation?

A. Yes, sir.

Q. Where is your place of business?

A. Near the foot of Court Street and Hamilton Avenue.

Q. What is the nature of your business?

A. Hardware, retail.

Q. That is adjacent to the Brooklyn waterfront?

A. Yes, sir.

[fol. 1010] Q. Have you a partner in that business?

A. My wife.

Q. Have you been in that section for a number of years?

A. Twenty-six.

Q. Is the name of Peter Pinto familiar to you from your business in that section?

A. No connection.

Mr. Barshay: We respectfully object to the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. Do you do business with people on the Brooklyn waterfront?

A. Yes, sir.

Q. Is the name of Albert Anastasio a familiar name to you?

A. No, sir.

Q. Did you ever hear that name discussed?

A. No, sir.

Q. Do you do business with firms on the Brooklyn waterfront?

A. Both firms and individuals, as they may be, down at the waterfront.

Q. Is that in connection with stevedoring?

A. Some.

Q. Ship loaders and unloaders?

A. Yes, sir.

Q. Teamsters who work there?

A. I would not have any trucking business with them, but they have done work for me.

Q. Have you heard any discussion in the vicinity or from people working on the Brooklyn waterfront in regard to Judge O'Dwyer's investigation?

A. No, sir.

Q. Did you come into contact with boss stevedores?

A. Yes, sir.

[fol. 1011] Q. Is that daily contact?

A. Well, I can say so, because I may be down today and may not be down for another month, but still, we come in contact with them at times, as it is called for. That would be purely business. I would sell somebody supplies.

Q. Did you read any articles in regard to Judge O'Dwyer's investigations?

A. At the time, yes.

Q. Did you follow them with a degree of interest?

A. More or less, for reasons.

Q. What are the reasons? Do you remember about the contents of the articles?

A. Not exactly, but just to what it would bring to a certain end, an end that all investigations may lead to.

Q. I think we gathered yesterday that you had two reasons.

A. One reason, and that reason was because an intimate member of the family of the man who had been killed in this case was an acquaintance of a particular friend of our family, and for that reason I was interested in it, for that reason, to read.

Q. Then I take it you have formed some impression about it?

A. Exactly.

Q. And because of the close relationship, it would be the kind of an impression that amounts to an opinion?

A. So much so it caused me annoyance.

Mr. Turkus: I am going to challenge.

The Court: Try the challenge.

SIGMUND KRAMER, residing at 815 Eighth Avenue, Brooklyn, [fol. 1012] New York, was sworn on the challenge.

By Mr. Turkus:

Q. Before you were sworn, and when you were called for the jury you made certain responses to questions I put to you?

A. Yes, sir.

Q. Do you recall the answers?

A. Yes, sir.

Q. Were those answers true?

A. Yes, sir.

Q. If I were to repeat the questions, would you make the same answers?

A. Yes, sir.

Q. Now that you are under oath, would those answers be true?

A. Yes, sir.

Q. In other words, because of your knowledge of one of the victims, you have a definite impression which would preclude you from being a fair juror?

A. Yes, sir.

Q. And you would have a prejudice which would inure to certain of the defendants?

A. Yes, sir.

Mr. Barshay: No questions.

Mr. Cuff: No questions by defense counsel.

Mr. Rosenthal: No questions.

The Court: Challenge sustained.

RICHARD J. HARMON, No. 2585, residing at 136 East 38th Street, Brooklyn, New York, examined as to his qualifications to serve as a juror.

By Mr. Turkus:

[fol. 1013] Q. What section of East 38th Street is that, East Flatbush?

A. Yes, sir.

Q. Have you lived there for a number of years?

A. Four.

Q. Prior to that what section of Brooklyn did you live in?

A. 411 East 4th Street, in the Kensington section.

Q. That would be out near Albemarle Road?

A. Yes, sir, between Albemarle and Avenue C.

Q. Did you live there for a number of years?

A. Five years.

Q. You are listed on the trestle board as a foreman, without any further designation. What were you foreman of?

A. I am a foreman of the Transportation Division of the Brooklyn Union Gas Company, the transportation end if it.

Q. Have you been employed by that utility for a number of years?

A. Twenty-eight years.

Q. Does your business bring you on the street, or do you work inside?

A. Both inside and out.

Q. Have you had any contact with any kind, nature, or description by way of social or business with the Brownsville and East New York sections of Brooklyn?

A. Well, yes, in an indirect way. We hire trucks from two or three firms in the East New York section.

Q. When you say "we," you mean the Brooklyn Union Gas Company?

A. Yes, sir.

Q. Other than that have you had any contact in that area, socially or by way of business?

A. No, sir.

[fol. 1014] Q. Does your business bring you into contact with the garment district or the clothing district in Manhattan?

A. No, sir.

Q. Or with the clothing truckers?

A. No, sir.

Q. Do you have any connections on the Brooklyn waterfront?

A. No, sir.

Q. Since your name appeared on this jury list and you received your notice as a prospective juror, did anybody speak to you about this case?

A. Home and at business.

Q. Was that in connection with your prospective service?

A. Yes, sir.

Q. There was no discussion about the merits of the case?

A. No, sir.

Q. Have you heretofore served as a juror in a criminal case?

A. No, sir, I have been called, but I never served.

Q. Was it on this special panel?

A. No, sir, it was years ago; Judge Dike was the judge.

Q. You have had no experience other than being in the courtroom when the questions were asked of the various prospective jurors?

A. No, sir.

Q. I take it from having sat in this court-room and listened to the questions being put to the prospective jurors, you understand the law comes exclusively from the trial judge?

A. Yes, sir.

Q. No matter what the lawyers or the District Attorney or anybody else say may be the law, it is not the law unless the Judge tells you?

A. Yes, sir.

[fol. 1015] Q. You are not going to take any law from any lawyer or prosecutor?

A. That is right.

Q. Whether they talk about law now or talk about law at the end of the case?

A. That is right.

Q. Will you take your law exclusively from the Judge?

A. Yes, sir.

Q. If selected, will you endeavor, conscientiously, to take the law that the Judge gives you in this case and apply it to the facts?

A. I will.

Q. Are you in sympathy with the enforcement of the Penal Law of this state?

A. Yes, sir.

Q. When the lawyers brought out, in questioning other talesmen, that their client has been heretofore convicted of a crime and served a long-term sentence, and asked the prospective jurors if they had any prejudice against the client, have you any prejudice against such a defendant?

A. No, sir.

Q. By the same token, would you deviate from proper result because the defendant has been heretofore convicted of crime and is now serving a sentence in jail for a crime he has committed?

A. I would not consider that at all.

Q. You would not relax your duty as a juror because he is in jail for some other crime?

A. No, sir.

Q. If selected, will it be your job to find out, is he guilty of murder in the first degree, as the indictment charges?

A. Yes, sir.

[fol. 1016] Q. One of the lawyers used the expression about letting anybody pull wool over his eyes, to a prospective juror. If selected as a juror, will it be your job to bring in a verdict that is in consonance with the evidence and in consonance with justice?

A. Yes, sir.

Q. You are not here to have anybody pull any wool over your eyes?

A. No, sir.

Q. You are here to find out, are these three defendants, Weiss, Buchalter, and Capone, guilty of murder in the first degree?

A. Yes, sir.

Q. There has been some statement about the character of accomplices. Do you understand what I mean by accomplices?

A. Yes, sir.

Q. Is it your idea that an accomplice is an individual who participated in the crime and then tells about it in the court-room?

A. Yes, sir.

Q. People who participate in crimes are not usually found in a theological institution, are they?

Mr. Cuff: I object.

The Court: Objection sustained.

Q. You are going to use your common sense here to decide who is believable?

A. Yes, sir.

Q. Is your test going to be, no matter what the background is of any men, how they are steeped in crime, no matter what they have done in the past, are they in this court-room telling the truth about the murder we are in-[fol. 1017] vestigating?

A. Yes, sir.

Q. As to that, there will be no wool pulled over anybody's eyes?

A. No, sir.

Mr. Climenko: I object to that question.

Mr. Turkus: I did not start it.

The Court: Objection sustained.

Q. There has been talk about nine lawyers in the case. Do you know any of the nine.

A. No, sir.

Q. If an argument is three times repeated in summation, is it going to make it three times as strong, because you heard it?

Mr. Climenko: I object to the question.

The Court: Objection overruled.

Mr. Climenko: Exception.

A. No, sir.

Mr. Climenko: It is assuming something not in evidence.

Q. Somebody has asked prospective jurors if the District Attorney says a man is an accomplice, will you look to see if he is an accomplice?

A. Yes, sir.

Q. Do you understand from the other questioning of the other jurors that if the District Attorney only had accomplices in the case, no matter how believable their story is, the jury could not convict?

A. Yes, sir.

Q. Just because the defense lawyers get up in summation and want to have somebody believe that the witness [fol. 1018] is an accomplice, are you going to let that influence your verdict, or will you find out for yourself whether or not, under the definition of law given you by the Judge, the witness called an accomplice by the defense is in fact an accomplice?

Mr. Barshay: I object to the form of the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I would take my instructions from the Court.

Q. Is your state of mind such, no matter what the accomplice may be or who he may be, that the inquiry is to find out is he telling the truth about this matter?

A. Yes, sir.

Q. Is there anything about the nature of accomplice testimony that would cause you to reject it under all circumstances?

A. No, sir.

Q. Do you find any fault with the District Attorney of the county breaking a case from the inside and using the testimony of one of the co-participants in the murder against another defendant?

Mr. Barshay: I object to the form of the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. No, sir.

Q. Do you have any bias or prejudice against the prosecution of an indictment wherein accomplice testimony is used?

A. No, sir.

Q. In other words, if you are selected as a juror, will you [fol. 1019] *you* talk the case over with common sense and understanding with the other jurors?

A. Yes, sir.

Q. Will you listen to reasonable argument and discussion?

A. Yes, sir.

Q. Of course, you will use your own common sense in weighing the matter?

A. Yes, sir.

Q. Is there any familiarity to your mind about any union official connected with the Amalgamated Clothing Workers of America?

A. No, sir.

Q. I take it the names of Weinstein and Katz and Belia mean nothing to you?

A. Nothing.

Q. In connection one way or the other with any clothing drivers' unions?

A. No, sir.

Q. Does the name of Orlofsky mean anything, or Slabo, or Weinstein, or Max Silverman?

A. No, sir.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. No, sir.

Q. Have you any familiarity with the name of William Alberts, at one time a bondsman?

A. No, sir.

Q. Or Emanuel Buchalter or Philip Kowas?

A. No, sir.

Q. Or people named Weiss, in the automobile renting business?

A. No, sir.

Q. I take it the names of Terry Burns and Slabo are not intimate to you?

A. Never heard of them.

Q. Do you know the District Attorney of the county, [fol. 1020] Judge O'Dwyer, personally?

A. No, sir.

Q. Do you know any Assistant District Attorney on his staff?

A. No, sir.

Q. Did you know the former District Attorney, Mr. Geoghan?

A. No, sir.

Q. Or any member of his staff?

A. No, sir.

By the Court:

Q. You live off the Holy Cross Cemetery?

A. Between the Holy Cross Cemetery and Kings County Hospital, 38th Street runs four blocks.

Q. You are near Church?

A. I am between Linden and Lenox.

Q. That is about three blocks?

A. The first is Clarendon, the next is Lenox, Linden, Church, and Snyder.

Q. You did not know Harry Strauss from that section?

A. No, sir.

By Mr. Turkus:

Q. Is your state of mind, from listening to the questions asked of the other prospective jurors, that the burden is strictly upon the prosecutor, the District Attorney of the county, Judge O'Dwyer, to establish guilt in this case beyond a reasonable doubt?

A. Yes, sir.

Q. Is it your understanding that the defendants have no burden, that they can sit here and say to the District Attorney, "Go ahead and prove my guilt?" That they can take the stand if they wish, and if they do not, no unfavorable inference can be drawn against them; that they have no burden at all?

A. Yes, sir.

[fol. 1021] Q. Will you follow the law from the Judge?

A. Yes, sir.

Q. Will you give the defendants in this case every constitutional right and every other right they should have in a criminal case?

A. Yes, sir.

Q. Assuming you have given them every right the law says they should have, and the District Attorney brings evidence into this court-room which satisfies your conscience beyond a reasonable doubt that at this bar of justice there are three guilty men, three men guilty of murder in the first degree, would you hesitate to say so if you believe that beyond a reasonable doubt?

A. No, sir.

Q. Would you have any fear or reluctance about bringing in that verdict?

A. No, sir.

By Mr. Talley:

Q. Would you have any fear or reluctance, to use the District Attorney's language, about bringing in a verdict of Not Guilty?

A. No, sir.

Q. You would vote for that verdict if the proof offered by The People against these defendants did not satisfy you beyond a reasonable doubt of their guilt?

A. Yes, sir.

Q. And if any of these defendants did not take the stand and testify themselves, would you hold that against them?

A. No, sir.

Q. Have you read anything about this case in the newspapers of Brooklyn or Manhattan?

A. Yes, sir, I have.

[fol. 1022] Q. You have read quite a bit?

A. Yes, sir.

Q. As a result of your reading, did you form any impression about this case, as to any of the defendants on trial?

A. Yes, sir, I have.

Q. Is that inference or impression unfavorable to any or all of these defendants?

A. Yes, sir.

Q. If you were to go into the jury box, if selected as a juror, would that impression be on your mind?

A. I would still have that impression.

Q. If selected as a juror you would still have it?

A. Yes, sir, I am afraid I would.

Q. It would take evidence on the part of the defendants, or some of them, to wipe that impression out of your mind?

A. Yes, sir.

Mr. Talley: No further questions.

By Mr. Rosenthal:

Q. What papers particularly did you read?

A. The *Mirror*.

Q. You have read that both before you were called for jury service and afterwards?

A. Not afterwards.

Q. In any event, the state of your mind is such, by reason of what you have read, that the quality or quantity of evidence which would have to be produced, either by The People or the defendants, is entirely different than what would have to be produced if you had not read anything about the defendants or did not know anything about them?

A. Yes, sir.

[fol. 1023] Q. So that the standard of evidence, because of your present state of mind, is entirely different than it would be had not you read anything about the defense?

A. Yes, sir.

Mr. Barshay: No questions.

All of the defendants challenge for cause.

The Court: Try the challenge.

Richard J. Harmon, a talesman, was sworn on the challenge.

By Mr. Talley:

Q. If the same questions were put to you now that you have been sworn, would your answers be the same as they were before the clerk administered the oath?

A. Yes, sir.

Mr. Talley: Judge, we press the challenge; without anything further from defense counsel.

Mr. Barshay: He is speaking for all of us.

By Mr. Turkus:

Q. I think you told us originally that you were foreman for a utility company.

A. Yes, sir.

Q. Which means you have supervision over men?

A. Yes, sir.

Q. You have charge of them, and issue orders?

A. Yes, sir.

Q. In other words, you do work that requires some degree of understanding of men?

A. Yes, sir.

Q. Initiative, on your part?

A. Yes, sir.

Q. And an understanding of problems you are working on and the men you are dealing with?

A. Yes, sir.

[fol. 1024] Q. I take it by your responses you have had no experience in criminal cases?

A. That is right.

Q. In other words, you have never had the benefit of listening to the Judge instruct on the law?

A. No, sir.

Q. Should the Judge, in telling you the law in the case, tell you that the burden of proof is always upon the District Attorney, and that the burden can never be diminished or increased, that it is a burden to establish guilt beyond a reasonable doubt, would you follow that instruction on the law?

A. Yes, sir.

Q. And is it repugnant to your mental state? Do you find fault with it?

A. No, sir.

Q. Is your state of mind such that it is sensible that the District Attorney should prove guilt beyond a reasonable doubt?

A. Yes, sir.

Q. Should the Judge go on and tell you further that a defendant has no burden in a criminal case, that he can sit mute if he desires, and no unfavorable inference can be drawn against him, would you follow that?

A. Yes, sir.

Q. Would you also follow the instruction of law, if the Judge should give it to you, and he undoubtedly will, that the defendant has no burden at all; he can leave the case rest with the jury on the proof of The People, that they have brought in against him, would you follow that?

A. Yes, sir.

Q. Now, should the Judge charge you that the case hinges [fol. 1025] upon credible evidence in the case, would you have any difficulty in following that instruction?

A. No, sir.

Q. You understand that what you read in the newspaper is not evidence?

A. That is right.

Q. Do you understand that there can be no substitute for evidence in a case?

A. That is right.

Q. And for that reason the District Attorney cannot take a newspaper and show it to the jury, "I am resting on this"?

A. That is right.

Q. Bearing in mind all these matters which we have now discussed, what is your state of mind with respect to taking the matters you have read in the newspaper, laying them aside, and deciding the case on the evidence?

A. Truthfully, I don't think I could banish the case altogether from my mind.

Q. Is it some reading you have had about crime in general?

Mr. Rosenthal: I object.

By the Court:

Q. The last answer you gave does not seem to indicate you understood the question. Has what you have heard caused you to form any opinion as to the guilt or innocence of any of these defendants on this particular charge?

A. Yes, sir.

The Court: Challenge sustained.

(A recess was taken at this point and the talesmen were cautioned as to their demeanor in the interim.)

(Recess until 2:00 p. m.)

[fol. 1026] Afternoon Session—Trial Resumed.

THOMAS E. FINN, of 953 Park Place, Brooklyn, New York, was examined as to his qualifications.

By Mr. Turkus:

Q. Mr. Finn, what is the nearest intersecting street to 953 Park Place?

A. Between New York and Brooklyn Avenues.

Q. Have you lived in that locality for a number of years?

A. Six years in this house.

Q. What do they call that section?

A. We call it the Bedford section.

Q. And prior to that time did you live in a different district or neighborhood?

A. Not very far away, Carroll Street and Nostrand Avenue.

By the Court:

Q. You are two blocks from the Christian Science church?

A. That is right.

By Mr. Turkus:

Q. Mr. Finn, on the trestle board you are listed as a business representative. Is that in business for somebody else or for yourself?

A. Brooklyn Edison Company.

Q. And have you been there for a number of years?

A. Twenty-eight years.

Q. Do you deal with the accounts using large quantities of electricity?

A. No, we are in the retail. Our business is service contract work.

[fol. 1027] Q. Does business bring you into contact with people in the Brownsville or East New York area of Brooklyn?

A. No.

Q. Or the Brooklyn waterfront?

A. No.

Q. Or the garment or clothing industries in Manhattan?

A. No.

Q. Then I can go along with the assumption that you have no contacts in any of those industries or districts through social contacts or connection or through business?

A. None whatsoever.

Q. Do you have any familiarity with any officials of unions, for example, the Amalgamated Clothing Workers

of America? Do you have any contact with any officer there?

A. No.

Q. Do the names of Weinstein and Katz, officials of the Amalgamated, the Clothing Cutters Union, Local 4, is that at all familiar to you in any way?

A. No.

Q. Are the names of Curley Holtz and that of Terry Burns and Abie Slabo at all familiar to you?

A. No.

Q. Do you have any contact, directly or indirectly, with any unions in connection with clothing transportation?

A. No.

Q. Clothing truckers? Is the name of Willie Alberts, a bondsman, at all familiar?

A. No.

Q. Or Bellanca and Tosca?

A. No.

Q. Or one of the organizers of the Amalgamated, a Bruno Belia?

A. No.

Q. Or Salvatore Marazzano?

A. No.

Q. Since you received your notice that you were a prospective juror in this case did anybody speak to you about the merits of the case?

A. None whatsoever.

Q. Have you heretofore served as a juror in a criminal case?

A. Yes.

Q. Has it been in Kings County?

A. It has.

Q. Did the case go to a conclusion?

A. Yes.

Q. And by that I mean did the Judge charge you on the law?

A. He did.

Q. I take it, then, that you are familiar, at least by way of instruction in the other case, with the law of reasonable doubt, the presumption of innocence, and the other safeguards that are given to a defendant in a criminal case?

A. That is correct.

Q. If accepted as a juror in this case, will you give every one of those to the defendants on trial here?

A. I will.

Q. Are you in sympathy with enforcement of the Penal Law of the state?

A. Yes.

Q. We have repeated the names of the nine lawyers who represent the three defendants in this case. Are any of them familiar to you by way of personal contact?

A. No, not personally.

Q. Do you know anyone employed in their respective law offices?

A. No.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. No.

Q. For example, are you familiar with David Price or [fol. 1029] William Kleinman, lawyers?

A. No.

Q. Do you know the District Attorney of the county, Judge O'Dwyer, or any member of his staff personally?

A. I do not.

Q. Did you know the former prosecutor, Mr. Geoghan?

A. Not personally.

Q. Did you know some members of his staff?

A. No.

Q. Do you have any feeling adverse to the prosecution wherein the testimony of an accomplice or a co-participant in the crime is used in the prosecution?

A. No.

Q. Do you have any bias against the prosecutor for using that kind of testimony?

A. No, I have not.

Q. In looking at the testimony of an accomplice, will you weigh everything that there is in the case, either to his detriment or to his advantage in weighing the believability of the testimony of that type of witness?

A. I will.

Q. For example, will you look carefully at his testimony, look at his past career in crime, his past association with criminals, and every vicious and immoral act he has committed in his past life? Will you do that?

A. I will.

Q. By the same token, will you keep in mind that we are trying a murder case?

A. I will.

Q. And in applying the tests that we have in the ordinary business experience, will you bear in mind that we are here to deal with some kind of characters that we do not ordinarily meet in our every-day relationship with the out-[fol. 1030] side world? Will you do that?

A. Yes, I will.

Q. Will you apply common sense and understanding to the issue and find out whether or not the accomplice is telling the truth in this particular murder case?

A. I will.

Q. May I go along, then, with the understanding that you won't shut your ears to the accomplice solely because he is a participant in the crime, but that you will look at his testimony with care and caution?

A. That is correct.

Q. And your job will be to see whether he is telling the truth in this specific case about this specific matter?

A. Yes.

Q. That you have no prejudice against the type of witness as would cause you to reject him under all circumstances?

A. I will be guided according to the charge of the Judge.

Q. At any rate, that you have no inherent prejudice either against the prosecution or the prosecutor for using that type of testimony?

A. None whatsoever.

Q. May I go along then with the understanding that you have no prejudice against a prosecutor who, to break a case from the inside, employs the use of accomplice testimony?

A. No.

Q. Is the name of Emanuel Buchalter or Philip Kewas at all familiar?

A. No.

Q. Or any person by the name of Weiss in the automobile rental business?

A. No.

Q. There has been some talk by one of the lawyers representing the defendant Buchalter about the fact that he was [fol. 1031] heretofore convicted of crime and is presently serving a jail sentence of a long number of years, and the prospective talesmen were asked if that fact would preju-

dice the juror against that defendant. Have you any such prejudice against a defendant who is serving a term in jail for the past commission of crime?

A. I have not.

Q. And, by the same token, would you deviate from a proper verdict simply because a defendant is in jail?

A. I would not.

Q. Or would you relax your duty in a murder case because he is serving time for some other crime he has committed?

A. No.

Q. Will you take the law in every respect from the Judge?

A. I will.

Q. And that is Judge Taylor, nobody else in the case—correct?

A. Exactly.

Q. If selected as a juror in the case, will you listen to common sense and reasonable discussion by the other jurors?

A. I will.

Q. Will you endeavor conscientiously to arrive at a verdict that is in consonance with the principles of justice and the evidence in the case?

A. I will.

Q. If selected as a juror in the case and you not only find that the accomplice who admits his participation with these defendants in the murder is telling the truth, but you find that there is other evidence in the case tending to connect the defendants with the commission of the murder, and you are satisfied about the case beyond a reasonable [fol. 1032] doubt, would you have any hesitation in saying so in your verdict?

A. I would not.

Q. Would you have any fear or reluctance?

A. No.

Q. If The People of the State of New York establish to your satisfaction beyond a reasonable doubt that at this bar of justice there are three guilty men, Buchalter, Weiss and Capone, would you have the slightest hesitation in announcing your verdict in consonance with that finding?

A. I would not.

Mr. Turkus: No challenge for cause.

By Mr. Talley:

Q. Mr. Finn, will you tell me just what your business is with the Edison Company?

A. Contract service work, new business, additional installation, if a man puts an additional load on his building, we take care of the contract, service work.

Q. Does your work take you outside of the office of the company?

A. Yes, it does, in and out.

Q. Have you read anything about this case or any of the defendants who are here?

A. Outside of the headlines in the paper since the trial started.

Q. Before the trial started did you read anything?

A. No.

Q. Have you talked about it with anybody other than members of your own family?

A. No.

Q. Have you formed any impression with respect to these defendants, or any of them?

A. Absolutely no impression or opinion.

[fol. 1033] Q. The Court will charge you that under our law the burden rests always upon The People to prove the guilt of the persons named in the indictment and that no burden rests upon them to prove their innocence. That is our American form of law. And that there is no burden or obligation on the part of the defendants to give any testimony or do anything, relying upon the obligation that rests upon The People to prove their guilt. You understand that?

A. I understand that.

Q. If any of these defendants, under advice of counsel, do not take the witness stand, would you form any inference unfavorable to any such defendant?

A. I would not.

Q. You understand that to be his privilege and his right under our American law?

A. I understand that thoroughly.

Q. If you have a reasonable doubt as to the guilt or innocence of these defendants from the testimony, not from anything else but from the testimony adduced in this case, will you give the defendants the benefit of that doubt?

A. Absolutely.

Q. Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case?

A. I do not.

Q. You say you read nothing about it since this trial commenced?

A. No, sir.

Q. You mean by that since the time you received your jury notice?

A. That is right.

Q. You have not read anything?

A. Outside of the headlines about the trial not having enough jurors to go around, that's all.

[fol. 1034] Q. Nothing beyond the headlines and nothing you read has caused you to form any impression as to the guilt or innocence of these defendants; is that correct?

A. That is correct.

Q. The District Attorney has indicated to you, and the Court will charge you that if accomplices testify against these defendants, that the jury cannot properly convict any such defendant unless the testimony of that accomplice is corroborated by independent testimony. You understand that?

A. I understand that.

Q. And unless you found the testimony of such accomplice to be corroborated, supported by testimony independent of them, would you render a verdict of acquittal with respect to those defendants?

Mr. Turkus: That is not a proper instruction of the law of corroboration. He left out a very important sentence: tending to connect the defendants with the commission of the crime. It may give a juror in advance some wrong opinion of the law.

The Court: Reframe it.

Q. If after accomplices had testified and you were unable to find on a re-examination of the testimony, a recounting of the testimony as you do in the jury room, if you were unable to find that there was any evidence in the case independent of the testimony of the accomplices which tended to connect these defendants with the commission of the [fol. 1035] crime, would you bring in a verdict of Not Guilty?

A. In that case I would.

Q. And you will accept the law as the Court charges you without quarrel or question as to whether that ought to be the law or not, will you not?

A. Exactly.

Q. Have you any acquaintance with members of the Police Department?

A. No.

Q. Or the Detective Bureau of the Police Department?

A. No.

Q. Nobody connected in any capacity with the District Attorney's office of this county?

A. I do not.

Q. When did you last serve as a juror in a criminal case?

A. 1940, last year.

Q. And when before that?

A. I think about four years before that, on a criminal case, but I have served in civil cases since then.

Q. Was that also in a criminal case?

A. It was.

Q. Were you in 1940, or four years before that, were you a member of the special jury panel such as you are now?

A. No.

Q. Is this the first time you have been called as a special juror?

A. First time.

Mr. Talley: No further questions.

By Mr. Rosenthal:

Q. You say you sat, Mr. Finn, in a criminal case in 1940?

A. That is right.

Q. Before what judge?

A. Judge Taylor.

[fol. 1036] Q. And was it a homicide case?

A. I do not know whether you would call it—it was caused by an automobile accident. The boy was killed.

Q. A manslaughter case?

A. Manslaughter.

Q. And before that time you served in 1936; is that it?

A. I think so.

Q. Was that a homicide case?

A. No, seduction case.

Q. So that you have never sat, I assume, then, on a homicide or murder case?

A. No.

Q. Since you have been in court here you have heard expressions of various jurymen that preceded you as to their state of mind; is that correct?

A. That is correct.

Q. You say you read the headlines. What papers, might I ask?

A. New York *World*, *Tribune*.

Q. Do you read the *Mirror*?

A. No, sir.

Q. And these headlines that you read, were they prior to your being called as a jurymen, or subsequent to your being called?

A. After I was called.

Q. Had you read anything at all prior to your being called as a juror.

A. No.

Q. And the headlines that you read were merely directed to the inability to speedily proceed with the procurement of a jury?

A. That is correct.

Q. You did not read any of the subject-matter of any——

A. None whatsoever.

[fol. 1037] Q. From what little you have read or heard, has any impression whatsoever been created in your mind as to the guilt or innocence of any of these defendants?

A. No, because the little I have read here could not give you any impression or any opinion.

Q. As you sit here now your mind is open, is it?

A. Exactly.

Q. And it is open to the extent that you would be able to receive the evidence from the witnesses and judge them according to what you believe is the truth of their statements; is that right?

A. That is right.

Q. Having heard, as you have, the question of accomplice, I assume by now you are familiar to a degree, as much as any layman would be, with the meaning of the word "accomplice," are you?

A. Yes.

Q. And you realize by now that if in the jury room you were only able to find in your own mind evidence which you would believe which was that of accomplices, that it would be your duty to acquit the defendants?

A. That is correct.

Q. You feel that you could follow a law of that character?

A. I feel I can follow the law right to the end.

Q. The mere fact that a defendant may admit that he knew one of the witnesses for The People who may have testified concerning some alleged fact against him, would that fact, standing alone prejudice you against the individual?

A. Would you mind repeating that question again?

[fol. 1038] Q. The mere fact that one of the defendants may admit that he knows one or more of the witnesses who are called by The People and who allege some certain fact against him, would that fact alone, that he knew those individuals and admitted that he knew them, prejudice you against the defendant?

A. No, it would not.

Q. You realize, sir, that you may know a lot of people who may know you, but you may not have anything to do with their nefarious undertakings; is that true? You may know a lot of people who may know you, but you may not have anything to do with their particular undertaking?

A. That is correct.

Q. So that the fact that one or more of the defendants may admit that they know one or more of The People's witnesses, you say, will not in and of itself prejudice you against the particular defendant who admits knowing, unless you feel the evidence warrants you in believing the truth of the particular witness's statement; is that correct?

A. That is right.

Q. Is there any reason at all that may not have been reached by the questioning of any of the attorneys, either the District Attorney or defendants' attorneys, which you feel would in any wise bias or prejudice you one way or the other?

A. No, it would not.

Mr. Rosenthal: No challenge for cause.

Mr. Turkus: Mr. Finn's satisfactory to The People of the State.

[fol. 1039] Mr. Talley: Challenge peremptorily.

CHESTER T. PRENTICE, of 315 Lenox Road, Brooklyn, New York, was examined as to his qualifications to serve as a juror.